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Laws, Joint Resolutions and Memorials

PASSED AT THE FIFTH SESSION

OF THE

LEGISLATIVE ASSEMBLY

OF THE

TERRITORY OF NEBRASKA,

BEGUN AND HELD AT OMAHA CITY, N. T.,

SEPTEMBER 21, A. D. 1858.

TOGETHER WITH

THE CONSTITUTION OF THE UNITED STATES

AND THE

ORGANIC LAW.

PUBLISHED BY AUTHORITY.

OMAHA, N. T.:

C. C. & C. D. WOOLWORTH,
BOOKSELLERS AND PUBLISHERS.

1859.

L. C. copy 2

SECRETARY'S OFFICE,
Omaha City, Nebraska Territory, }
December 20th, 1858. }

I hereby certify that I have this day delivered to Thomas Morton, of the "Nebraska City News," and Theodore H. Robertson, of the "Omaha Nebraskian," Territorial Printers, true and correct copies of all the Laws, Joint Resolutions and Memorials, passed by the Legislative Assembly of Nebraska Territory at the session begun and held at Omaha city, N. T., September 21, A. D. 1858.

J. STERLING MORTON,

Secretary of Nebraska Territory.

We hereby certify that the following are true and correct copies of the Laws, Joint Resolutions and Memorials passed by the Legislative Assembly of Nebraska Territory, at the session begun and held at Omaha city, N. T., September 21, A. D. 1858, and delivered to us by J. Sterling Morton, Secretary of Nebraska Territory.

Omaha, N. T., December 20, 1858.

THOMAS MORTON,

THEODORE H. ROBERTSON,

Territorial Printers.

CONSTITUTION

OF THE

UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1.

1. All legislative powers herein granted, shall be vested Legislative power. in a Congress of the United States, which shall consist of ^{er.} a Senate and House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of House of representatives and qualification of members chosen every second year by the people of the several states; and the electors in each state shall have the qualification requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative, who shall not have electors and representatives. attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned Apportionment of representatives. among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three

Ratio of representatives.

First apportionment.

Vacancies.

Speaker of the house.

years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

The senate—each senator a vote.

Senators classed.

A third of the seats vacated every two years.

Vacancies.

Qualification of senators.

President of the senate.

Officers.

Impeachments.

1. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class, shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected be an inhabitant of the state for which he shall be chosen.

4. The vice president of the United States shall be president of the Senate; but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a president, *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no per-

son shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law. And extent of judgment in cases.
Party liable according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof, but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators. Elections how regulated.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day. Meetings of congress.

SECTION 5.

1. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide. To judge of the election of its members, Quorum.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. Rules.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. Journals.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to other place than that in which the two houses shall be sitting. Adjournment.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place. Compensation.
Privilege.

Concerning the holding of office. 2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house, during his continuance in office.

SECTION 7.

Revenue bills. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Power and duty of the President in relation to bills. 2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at large, in their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But, in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted), after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevents its return; in which case, it shall not be a law.

Joint resolutions except for adjournment, to receive the same sanction as bills. 3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power—

Power of congress relative to taxes. 1. To lay and collect taxes, duties, imposts and excises; to pay the debts, and to provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States.

Loans. 2. To borrow money on the credit of the United States.

Commerce. 3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States. Naturalization.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. Money.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States. Counterfeiting.

7. To establish post offices and post roads. Post-offices.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. Science.

9. To constitute tribunals inferior to the supreme court. To define and punish piracy and felony committed on the high seas and offenses against the law of nations. Tribunals.

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. War.

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years. Armies.

12. To provide and maintain a navy. Navy.

13. To make rules for government and regulation of the land and naval forces. Land and naval forces.

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions. Militia.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectfully, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erections of forts; magazines, arsenals, dock-yards, and other needful buildings; and Legislation over a district, &c.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. Laws necessary for the execution of their powers.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may Of the importation of certain persons, &c.

be imposed on such importation, not exceeding ten dollars for each person.

Writ of habeas corpus. 2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Attainder, &c. 3. No bill of attainder or ex post facto law shall be passed.

Direct taxes. 4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Of commerce from the states, &c. 5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

Of expenditures. 6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No nobility created and no presents accepted by U. S. officers, etc. 7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

Powers prohibited to the individual states. 1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold or silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the states can exercise only under the sanction of congress. 2. No state shall, without the consent of the Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of Congress. No state shall without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1.

Executive powers. 1. The executive power shall be vested in a president of the United States of America. He shall hold his office

during the term of four years, and together with the vice president, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives, to which the state may be entitled in the Congress, but no senator or representative, or persons holding an office of trust or profit under the United States, shall be appointed an elector.

Electors of President and Vice-President.

3. The electors shall meet in their respective states and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number is a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the vice president.*

Meeting of the electors.

Their proceedings.

[*Annulled, see amendments, art. 12.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Time of choosing electors.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifications for President.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the Congress may, by law, pro-

When his duties devolve on the vice president, &c

vide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Compensation.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive during that period any other emolument from the United States or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation:

Oath of the president.

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.

Powers of the president.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

His powers with the advice and consent of the senate.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Of appointment of inferior officers.

President may fill vacancies.

3. The president shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION 3.

Duties of president.

1. He shall from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of ad-

journalment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

1. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.

1. The judicial power of the United States shall be vested Judicial power. in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and Its extent. equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign [*Restriction by art. 11 of amendments.] states, citizens or subjects.*

2. In all cases affecting ambassadors, other public ministers or consuls, and those in which a state shall be a Jurisdiction of supreme court. party, the supreme court shall have original jurisdiction. In all the other cases, before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, Trial of crimes. shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only Treason.

in levying war against them, or in adhering to their enemies; giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Its punishment. 2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeit, except during the life of the person attained.

ARTICLE IV.

SECTION 1.

Faith to be given to the acts, &c., of states. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2.

Reciprocity of citizenship. 1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals to be delivered up. 2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Also runaway slaves, &c. 3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

Admission of new states. 1. New states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

Power of congress over territory, &c. 2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States, or of any particular state.

SECTION 4.

Guarantee and protection of each state. The United States shall guaranty to every state in this Union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution; or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. *Provided*, That no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Mode of amending the constitution.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

Debts assumed.

2. This Constitution, and the Laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.

The supreme law of the land.

3. The Senators and Representatives, before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Representatives &c., to support this constitution.

No religious test.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Ratification of nine states sufficient.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof we have hereunto subscribed our names.

GEO. WASHINGTON, *President,*
and Deputy from Virginia.

New Hampshire:
John Langdon,
Nicholas Gilman.

Massachusetts:
Nathaniel Gorman,
Rufus King.

<i>Connecticut :</i>	John Dickinson,
William Samuel Johnson,	Richard Bassett,
Roger Sherman.	Jacob Broom.
<i>New York :</i>	<i>Maryland :</i>
Alexander Hamilton.	James M'Henry,
<i>New Jersey :</i>	Daniel of St. Tho. Jenifer,
William Livingston,	Daniel Carroll.
David Brearley,	<i>Virginia :</i>
William Patterson,	John Blair,
Jonathan Dayton.	James Madison, Jr.
<i>Pennsylvania :</i>	<i>North Carolina :</i>
Benjamin Franklin,	William Blount,
Thomas Mifflin,	Richard Dobbs Spaight,
Robert Morris,	Hugh Williamson.
George Clymer,	<i>South Carolina :</i>
Thomas Fitzsimmons,	John Rutledge,
Jared Ingersoll,	Chas. Cotesworth Pinckney,
James Wilson,	Charles Pinckney,
Gouverneur Morris.	Pierce Butler.
<i>Delaware :</i>	<i>Georgia :</i>
George Reed,	William Few,
Gunning Bedford, Jr.,	Abraham Baldwin.

Attest,

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Religion, speech,
the press and the
right of petition.

Congress shall make no law respecting the establishment of religion, or preventing the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

People may keep
arms.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Quartering of
soldiers.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Security against
unreasonable
searches and sei-
zures.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or other-wise infamous crime, unless on a presentment or indictment of a grand jury, except in a case arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, or be deprived of life, liberty, property, without due process of law; nor shall private property be taken for public use without just compensation.

Presentment or indictment in criminal cases.

Rights of private property.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process, for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Rights of the accused.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Right of trial by jury.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Of bail, fines, and punishments.

ARTICLE IX.

The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated not to disparage those retained.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

Reserved powers.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or in equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Restriction of judicial powers.

ARTICLE XII.

Mode of elect-
ing president
and vice presi-
dent of the
United States.

1. The electors shall meet in their respective states and vote by ballot, for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the persons voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the vice president; a quorum, for that purpose, shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE XIII.

When citizen-
ship shall be
forfeited.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ORGANIC LAW.

AN ACT

TO ORGANIZE THE TERRITORIES OF

NEBRASKA AND KANSAS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri river, where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government, by the name of the Territory of Nebraska; and when admitted as a state or states, the said territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory, which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory;

Temporary gov-
ernment for ter-
ritory of Nebras-
ka established.

Boundaries.

Admitted as a
state or states
with or without
slavery. Power
to divide said
territory, or to
attach portion of
it to a state or
territory, reser-
ved.

Proviso.

Rights of Indians
in said territory
not impaired.

United States retain their present authority over said Indians-

but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the president of the United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law or otherwise, which it would have been competent to the government to make if this act had never passed.

The executive power vested in a governor, his term of office, powers, duties and emoluments

§ 2. *And be it further enacted,* That the executive power and authority, in and over said Territory of Nebraska, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

Secretary, his powers and duties.

§ 3. *And be it further enacted,* That there shall be a secretary of the said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate, and to the speaker of the house of representatives, to be deposited in the libraries of congress; and in case of the death, removal, resignation or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

In case of death, resignation, removal or absence of governor, the secretary to act as governor.

Legislative power—how vested. Legislative assembly to consist of a council and house of representatives.

§ 4. *And be it further enacted,* That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters, as hereinafter prescribed, whose term of service

shall continue two years. The house of representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory, representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory, to be taken by such persons and in such mode as the governor shall designate and appoint; and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such a manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives, shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Number of councilors and representatives.

Number of councilors and representatives limited.

Apportionment of representation.

Census to be taken, when and how.

How the first election shall be conducted, and who declared elected.

Proviso in case of vacancy or no choice,

Subsequent elections to be determined by the assembly.

Proviso as to terms of sessions of legislative assembly.

- Qualifications of voters. § 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, That no officer, soldier, seaman or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said territory, by reason of being on service therein.
- Proviso.
- Who have the right of suffrage and of holding office.
- Further proviso.
- Legislative power of the territory defined. § 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall before it become a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.
- Governor's veto.
- Bills may be passed by two thirds of each house, notwithstanding.
- Bills to become a law unless returned within three days.
- How township, district and county officers are to be appointed. § 7. *And be it further enacted*, That all township, district and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative

assembly of the Territory of Nebraska. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly; and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

§ 8. *And be it further enacted*, That no member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or hold any office under the government of said territory.

No member of legislature shall hold certain offices during term of his election or for one year thereafter, officers of U. S. except postmasters not to be members of the assembly.

§ 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as shall be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme

The judicial power--in whom vested and how to be exercised.

Three judicial districts formed.

Jurisdiction of courts and of justices of the peace.

Proviso.

Each district court appoint its clerk.

Writs of error, &c., allowed.

Supreme court appoint its own clerk. court, shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from supreme court when taken to supreme court of United States. of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the supreme court, without regard to the value of the matter, property or title in controversy; and except also that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions of the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved September eighteen, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Utah territory now receive for similar services.

Exception. *§ 10. And be it further enacted*, That the provisions of an act entitled "A act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteen, eighteen hundred and fifty, be, and the same

Proviso as to fugitives from justice and from labor. 1793, ch. 7. 1850, ch. 60.

Habeas corpus.

Fees of clerks.

The act—1793 ch. 7, 1850, ch. 60, extended over this territory.

are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

§ 11. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra service.

The attorney and marshal, tenure of their offices and compensation.

§ 12. *And be it further enacted*, That the governor, secretary, chief justices, and associate justices, attorney and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civic officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars. The chief justice and associate justices shall each receive an annual salary of two thousand dollars.

The governor, secretary, chief justices, associate justices, attorney and marshal—how to be appointed. Each to take official oaths, &c.

Salary of governor.

Salary of chief justice and associate judges.

Secretary's salary. . . The secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarterly, from the dates of the respective appointments, at the treasury of the United States; but no such payments shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, and assistant clerk, a sergeant-at-arms, and doorkeeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers, three dollars per day during the session of the legislative assembly; but no other officer shall be paid by the United States: *Provided*, That there shall be but one session of the legislature annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislature together. There shall be appropriated, annually, the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not especially authorized by the acts of congress, making the appropriations, nor beyond the sums thus appropriated for such objects.

Compensation of members of the legislative assembly. . .

Pay of certain officers of each house. . .

Proviso as to number of sessions annually. . .

Contingent expenses provided for. . .

Expenditures of legislative assembly limited. . .

Legislative assembly to hold its first session as directed by the governor. . .

Seat of government. . .

§ 13. *And be it further enacted*, That the legislative assembly of the Territory of Nebraska shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

§ 14. *And be it further enacted,* That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected; and a certificate thereof shall be given accordingly. That the constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of nonintervention by congress with slavery in the states and territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the compromise measures, is hereby declared inoperative and void, it being the true intent and meaning of this act not to legislate slavery into any territory or state nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States: *Provided,* That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

A delegate to be elected to the congress of the United States.

The constitution and applicable laws of the U. S. shall be in force in the territory except the eighth section of ch. 22, declared void.

The intent of this act concerning slavery.

Proviso as to revival of laws concerning slavery. 1820, ch. 22.

§ 15. *And be it further enacted,* That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount, to be expended under the direction of the said governor of the Territory of Nebraska, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of said territory, and such other persons, and under such regulations as shall be prescribed by law.

Appropriation for public buildings.

§ 16. *And be it further enacted,* That when the lands in

Reservation for schools.

the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections number sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Judicial districts
how defined.

§ 17. *And be it further enacted*, That until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts; and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Officers appointed
by president
to give security
for moneys re-
ceived in certain
cases.

§ 18. *And be it further enacted*, That all officers to be appointed by the president, by and with the advice and consent of the senate, for the Territory of Nebraska, who, by virtue of the provisions of any law now existing, or which may be enacted during the present congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner, as the Secretary of the territory may prescribe.

Temporary gov-
ernment for ter-
ritory of Kansas.

§ 19. *And be it further enacted*, That all that part of the territory of the United States included within the following limits, except such portions thereof as are herein after expressly exempted from the operations of this act, to wit: beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning, be, and the same is hereby created into a temporary government by the name of the Territory of Kansas; and when

Boundaries.

Admitted as
State or states
with or without
slavery.
Power to divide
said territory or
to attach part of
it to a state or
territory reserv-
ed.

admitted as a state or states, the said territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two

or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Providing, further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas, until said tribe shall signify their assent to the president of the United States to be included within the said Territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

Rights of Indians, in said territory not impaired.

United States retain all their present authority over said Indians.

§ 20. *And be it further enacted,* That the executive power and authority in and over said Territory of Kansas shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

The executive power vested in a governor, his tenure of office, powers, duties and emoluments

§ 21. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, to be deposited in the libraries of congress; and, in case of the

Secretary, his power and duties.

When secretary
is to act as gov-
ernor.

death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

Legislative
power—how
vested.
Legislative as-
sembly to con-
sist of a council
and house of
representatives.

§ 22. *And be it further enacted,* That the legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualification of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided,* That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as near as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the territories, to be taken by such persons and in such mode as the governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The person having the highest number of legal votes in each of said council district for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives, shall be declared by the governor to be duly elected members of said house: *Provided,* That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor

Number of coun-
cillors and re-
presentatives
limited.
Apportionment
of representa-
tion.

Census to be
taken—when
and how.

How the first
election shall be
conducted—who
declared elected.

Proviso in case
of vacancy or no
choice.

shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session which may continue for sixty days.

Subsequent elections to be determined by the assembly.

Proviso as to terms of sessions of that legislative assembly.

§ 23. *And be it further enacted*, That every free white male inhabitant, above the age of twenty-one years, who shall be an actual resident of said territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act: *And provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said territory, by reason of being on service therein.

Qualifications of voters.

Proviso.

Who have the right of suffrage and of holding office.

Further proviso.

§ 24. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it become a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved

Legislative power of the territory defined.

Governor's veto.

Bill may be passed by two-thirds of each house not withstanding.

by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

Bills to be a law unless returned by governor within three days.

How townships, districts, and county officers are to be appointed.

§ 25. *And be it further enacted,* That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory of Kansas. The governor shall nominate, and, by and with the consent of the legislative council, appoint all officers not herein otherwise provided for; and, in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly; and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

No member of legislature shall hold certain offices during term of his election or for one year after. Officers of U. S. except the postmasters, not to be members of the assembly.

§ 26. *And be it further enacted,* That no member of the legislative assembly shall hold, or be appointed to, any office which shall have been created; or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or hold any office under the government of said territory.

The judicial power--in whom vested and how to be exercised.

§ 27. *And be it further enacted,* That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of justices of the peace,

Three judicial districts formed.

Jurisdiction of courts and of justices of the peace.

shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall trial by jury be allowed in said court. The supreme court or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving titles to slaves, the said writs of error, or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property or title in controversy; and except also that a writ of error or appeal shall also be allowed to the supreme court of the United States, from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or effect the provisions to the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved September eighteen, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States; as is invested in the circuit and district courts of the United States, and the said supreme and district courts of the said territory, and the respective judges thereof shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the

Proviso.

Each district court appoint its clerk.

Writs of error, &c., allowed.

Supreme court appoint its own clerk.

Writs of error and appeals from supreme court when taken to supreme court of United States.

Exception.

Proviso as to fugitives from justice and from labor.

1793, ch. 7,

1850, ch. 60.

Certain causes to take precedence.

District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Utah territory, now receive for similar services.

Fees of clerks.

The act—1793 ch. 7, 1850, ch. 60, extended over this territory.

§ 28. *And be it further enacted*, That the provisions of an act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend and supplementary to, the aforesaid act," approved September eighteen, eighteen hundred and fifty, be, and the same are hereby declared to extend to and be in full force within the limits of said Territory of Kansas.

The attorney and marshal, tenure of their office and compensation.

§ 29. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as attorney of the United States for the present Territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties and be entitled to the same fees, as the marshal of the district court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

The governor, secretary, chief justice, and associate justices, attorney and marshal—how to be appointed.

Oaths.

§ 30. *And be it further enacted*, That the governor, secretary, chief justices and associate justices, attorney and marshal, shall be nominated, and by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices;

which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified; which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars. The chief justice and associate justices shall each receive an annual salary of two thousand dollars. The secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payments shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty-miles' travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route; and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, and assistant clerk, a sergeant-at-arms, and doorkeeper, may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers, three dollars per day during the session of the legislative assembly; but no other officer shall be paid by the United States: *Provided*, That there shall be but one session of the legislature annually, unless on an extraordinary occasion, the governor shall think proper to call the legislature together. There shall be appropriated annually, the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including a salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall in the disbursement of all moneys intrusted to them, be governed

Salary of governor.

Salary of chief justice and associate judges.
Secretary's salary.

Compensation of members of the legislative assembly.

Pay of certain officers of each house.

Proviso as to number of sessions annually.

Contingent expenses provided for.

Expenditures of legislative assembly limited.

Seat of government at Fort Leavenworth. Public buildings used as government directs.

A delegate to be elected to the congress of the United States.

The constitution and applicable laws of the U. S. shall be in force in the territory except the eighth section of ch. 22, declared void.

The intent of this act concerning slavery.

Proviso as to revival of laws concerning slavery.

solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress, making the appropriations, nor beyond the sums thus appropriated to such objects.

§ 31. *And be it further enacted*, That the seat of government of said territory is hereby located temporarily at Fort Leavenworth; and that such portions of the public buildings as may not be actually used and needed for military purposes, may be occupied and used, under the direction of the governor and legislative assembly, for such public purposes as may be required under the provisions of this act.

§ 32. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections, the times, places and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected; and a certificate thereof shall be given accordingly. That the constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said Territory of Kansas as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by congress with slavery in the states and territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act, not to legislate slavery into any territory or state, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regu-

lation which may have existed prior to the act of sixth 1820 ch. 22. March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

§ 33. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount, to be expended under the direction of the said governor of the Territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government, for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of said territory, and such other persons, and under such regulations as shall be prescribed by law.

Appropriation for public buildings and library.

§ 34. *And be it further enacted*, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections number sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Lands to be surveyed—how to be disposed of.

Reservation for schools.

§ 35. *And be it further enacted*, That until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts; and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Judicial districts how defined.

§ 36. *And be it further enacted*, That all officers to be appointed by the president, by and with the advice and consent of the senate, for the Territory of Kansas, who, by virtue of the provisions of any law now existing, or which may be enacted during the present congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner, as the secretary of the treasury may prescribe.

Officers appointed by president to give security for moneys received in certain cases.

§ 37. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act, shall be faithfully and rigidly observed, notwithstanding anything contained in this act;

Not to interfere with the treaties laws, &c., made with the Indians by the United States.

and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the election of the office of superintendent.

PART FIRST.

CRIMINAL CODE.

AN ACT to adopt and establish a Criminal Code for the Territory of Nebraska.

CHAPTER I.

Be it enacted by the Council and House of Representatives of the Territory of Nebraska, that the provisions of this act shall regulate the proceedings in all prosecutions and penal actions in all the courts of this Territory, from and after the passage hereof; and shall be known as the Criminal Code.

PERSONS CAPABLE OF COMMITTING CRIMES.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence. Definition of a crime.

§ 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused. Intention.

§ 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

§ 4. An infant, under the age of ten years, shall not be found guilty of any crime or misdemeanor. Infants.

§ 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided*, The act so charged as criminal shall have been committed in the condition of insanity. Lunatics.

§ 6. An idiot shall not be found guilty, or punished for any crime or misdemeanor with which he or she may be charged. Idiota.

Counseling
idiots, lunatics
and infants to
commit crime.

§ 7. Any person counseling, advising or encouraging an infant, under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense, when committed, as principal, and, if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot.

Married women
acting under
coercion of hus-
band.

§ 8. A married woman, acting under the threats, command or coercion of her husband, shall not be guilty of any crime or misdemeanor not punishable with death, provided it appear, from all the facts and circumstances of the case, that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness.

§ 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion.

Acts committed
by accident, etc.

§ 10. Acts committed by misfortune or accident shall not be deemed criminal where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Commission of
crime under
threats and me-
naces.

§ 11. A person committing a crime or misdemeanor, not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger; or that he or she had reasonable cause to believe, and did believe, that his or her life or member was in danger, shall not be found guilty; and such threats or menaces, being proved and established, the person or persons compelling, by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

Proceedings
where the ad-
cused becomes
insane pending
the prosecution.

§ 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after, judgment, and before execution of the sentence, such person become lunatic or insane, then, in case the punishment be capital, the execution thereof

shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

ACCESSORIES TO CRIMES.

§ 13. An accessory is he or she who stands by and aids, abets or assists; or who, not being present aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly. Accessories at and before the fact.

§ 14. An accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with, or found guilty of, the crime. Any person being found guilty of being an accessory after the fact shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime. Accessories after the fact.

WHO MAY BE WITNESSES IN CRIMINAL CASES.

§ 15. The party or parties injured shall, in all cases, be competent witnesses, unless he, she or they shall be rendered incompetent by reason of his, her or their infamy, or other legal incompetency other than that of interest. The credibility of all such witnesses shall be left to the jury, as in other cases. Party injured a competent witness.

§ 16. No black or mulatto person or Indian shall be permitted to give evidence in favor or against any white person whatsoever. Every person who shall have one-fourth part or more of negro blood shall be deemed a mulatto; and every person who shall have one-half Indian blood shall be deemed an Indian. Negroes, Mulattoes and Indians incompetent.

§ 17. Approvers shall not be allowed to give testimony. Approvers.

§ 18. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit willful and corrupt perjury. Affirmation.

OFFENSES AGAINST THE PERSONS OF INDIVIDUALS.

§ 19. Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms or means by which human nature may be overcome and death thereby occasioned. Murder.

§ 20. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Express malice.

Implied malice. § 21. Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder shall be death.

Manslaughter. § 22. Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

1. Voluntary. § 23. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious personal injury on the person killing.

§ 24. The killing must be the result of that sudden, violent impulse of passion, supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as a murder.

2. Involuntary. § 25. Involuntary manslaughter shall consist in the killing of a human being without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: *Provided, always,* That where such involuntary killing shall happen in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense shall be deemed and adjudged to be murder.

3. Punishment. § 26. Every person convicted of the crime of manslaughter shall be punished by imprisonment to the penitentiary for a term not exceeding ten years.

Death must take place within a year and a day to constitute murder, etc. § 27. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered, in the computation of which, the whole of the day on which the hurt was done shall be reckoned the first.

Venue. § 28. If the injury be inflicted in one county and the party die within another county or without the territory, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county and the party killed be in another county, at the time of the cause of death shall be administered, the accused may be tried in either county.

§ 29. Justifiable homicide is the killing of a human being in necessary self defense, or in the defense of habitation, property or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a known felony, such as murder, rape, robbery, burglary and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. Justifiable homicide. ho-

§ 30. A bare fear of any of these offenses, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears and not in a spirit of revenge.

§ 31. If a person kill another in self defense, it must appear that the danger was so urgent and pressing, that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith, endeavored to decline any further struggle before the mortal blow was given.

§ 32. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer attempts to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting or other crime, denominated felony by this code, and he be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he kill the person accused, the officer so killing shall be justified: *Provided*, That such officer previous to such killing, shall have used all reasonable efforts to take the accused without success, and that, from all probability, there was no prospect of being able to prevent injury from such resistance, and the consequent escape of such accused person. Killing of an officer.

§ 33. Justifiable homicide may also consist in unavoidable necessity, without any will or desire, and without any inadvertence or negligence in the party killing. An officer, who in the execution of public justice, puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty, proceed according to the sentence and the law of the land. Killing by unavoidable necessity.

§ 34. Excusable homicide, by misadventure, is when a person is doing a lawful act, without any intention of killing, yet unfortunately kills another. Excusable homicide.

§ 35. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

§ 36. The homicide appearing to be justifiable or excusable, the person indicted shall, upon his trial, be fully acquitted and discharged.

Onus probandi. § 37. The killing being proved, malice shall be presumed and the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused in committing the homicide.

Concealing death of bastards. § 38. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which is born alive would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof shall suffer imprisonment in the county jail for a term not exceeding one year: *Provided, however,* That nothing herein contained shall be construed as to prevent such mother from being indicted and punished for the murder of such bastard child.

Petit treason. § 39. The distinction between petit treason and murder is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly.

Duelling. § 40. If any person hereafter shall willfully and maliciously or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party, and in so doing shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof within one year thereafter, every such offender, his second, as well as the second of the person killed, and all aiders, abettors and counselors, being thereof duly convicted, shall be considered to have committed a felony, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years nor less than one year.

§ 41. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust or emolument, either civil or military, under the government of this territory, and be fined in a sum not exceeding one hundred dollars.

§ 42. If any person shall willingly or knowingly, carry or

deliver any written challenge, or verbally deliver any message intended as or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto, such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument or weapon with which the duel shall be fought or intended to be fought, so that it be alleged in the indictment, that the engine, weapon or instrument was deadly, the probable consequence of fighting with which might be the death of either of the parties.

§ 43. Every person who shall willfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.

§ 44. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year nor more than three years: *Provided*, That no person shall be found guilty of mayhem where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a felony,

and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

§ 45. Any person who shall willfully and maliciously deprive any person of either or both, or of any part or either or both of their testicles, shall be punished by fine in the penitentiary, not less than five nor more than fifteen years.

Rape.

§ 46. Rape is the carnal knowledge of a female, forcibly and against her will. Every male person of the age of fourteen years and upward, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary, for a term not less than one year, and may extend to life.

§ 47. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Crime against nature.

§ 48. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Assault.

§ 49. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Aggravated assault.

§ 50. An assault, with an attempt to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to confinement in the penitentiary, for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a felony, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

Assault and battery.

§ 51. An assault and battery is the unlawful beating of another.

False imprisonment.

§ 52. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment, shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Kidnapping.

§ 53. Kidnapping is the forcible abduction or stealing away of a man, woman or child, from his or her own country, and sending or taking him or her into another.

§ 54. Every person who shall forcibly steal, take or arrest

any man, woman or child, whether white, black or colored in this territory, and carry him or her into another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping, shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped or attempted to be kidnapped.

§ 55. Every person who shall hire, persuade, entice, decoy or seduce, by false promises, misrepresentations and the like, any negro, mulatto or colored person, not being a slave, to go out of this territory, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto or colored person into slavery or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto or colored person, any person so offending, shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section.

Enticing away colored people with a view to sell them into slavery.

CRIMES AND OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS.

§ 56. Every person who shall willfully and maliciously burn, or caused to be burned, any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, malt house, stilling house, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail or other public building, or any boat or other water craft, or any bridge of the value of fifty dollars, erected across any of the waters of this territory, such person so offending, shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning, as aforesaid; such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly.

Every person who shall willfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a felony, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars.

§ 57. Every person who shall, in the night time, willfully

Burglary.

and maliciously, and forcibly break and enter, or willfully and maliciously, without force (the doors or windows being open), enter into any dwelling house, kitchen, office, shop, store house, ware house, malt house, stilling house, mill, pottery, factory, water craft, church or meeting house, with intent to commit murder, robbery, rape, mayhem, larceny or other felony, shall be deemed guilty of burglary, and, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

CRIME AND OFFENSES RELATIVE TO PROPERTY.

Robbery.

§ 58. Robbery is the felonious and violent taking of money, goods or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Larceny.

§ 59. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means, or muniments, by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than ten years.

§ 60. If any person shall remove, haul or in any manner take away any claim, house, shanty, or other building, the property of another, he shall be deemed guilty of a larceny, and, upon conviction thereof, shall be punished as provided in the last preceding section.

Receiving stolen goods.

§ 61. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years, and every such person may be tried, convicted and punished, as well before as after the trial of the principal. No person, convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to five dollars.

§ 62. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. Such owner may maintain his action, not only against the felon, but against any person in whose possession he may find the same.

Property to be restored.

§ 63. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, That no person shall be condemned to the penitentiary, under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offenses herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery or burglary, shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail, for a term not exceeding three months, and fined not exceeding fifty dollars.

Altering marks or brands.

Grand and petit larceny.

§ 64. Every servant, officer or person employed in any public department, station or office of the government of this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take and carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Embezzlement by state, county and corporate officers.

§ 65. If any officer or person who now is, or hereafter may be entrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct in this territory, to any canal, turnpike or rail road fund of this territory, or any county thereof, or to any fund for the improvement of any public road, river, creek or other water course, bordering on or within this territory, or to any other fund, now in being, or hereafter to be established by law for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes

and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this territory, to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders, ought by law to be paid over, or by his or their attorney or agent duly authorized, in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years: *Provided*, That no person shall be committed to the penitentiary, under this section, unless the money not paid over shall amount to five dollars, or if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

Destroying or
defacing deeds,
etc.

§ 66. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any bank bill or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this territory, or of the United States, or of any state or any other territory, for the payment of money, or any receipt, acquittance, release defeasance, discharge of any debt, suit or other demand of any transfer or assurance of money, stock, goods, chattels or other property, or any letter of attorney or other power, or any day book or other book of account, or any agreement or contract whatsoever, with intent to defraud, prejudice or injure any person or body corporate, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year, nor more than five years.

Land marks.

§ 67. Every person who shall knowingly, maliciously and fraudulently, cut, fell, alter or remove any certain boundary tree or other allowed land mark, to the wrong of his neighbor or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail, for a term not exceeding three months.

Embezzlement
1. By servants,
etc.

§ 68. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels, shall be intrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill or note, or goods or chattels, or any part

thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

§ 69. If any bailee of any money, bank bill or note, or goods or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly. 2. By bailees.

§ 70. If any lodger shall take away, with intent to steal, embezzle or purloin, any bedding, furniture, goods or chattels, which he or she is to use, in or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction shall be punished accordingly. 3. By lodgers.

FORGERY AND COUNTERFEITING.

§ 71. Every person who shall falsely make, alter, forge or counterfeit any record, or other authentic matter, of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill, for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand, or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock, or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory or promissory note, for money or other property; or shall counterfeit or forge the seal or hand writing of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in, or belong to, this territory or not; or shall utter, publish, pass or attempt to pass, as true and Forgery.

genuine, or cause to be uttered, published, passed or attempted to be passed as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not; every person so offending, shall be deemed guilty of forgery, and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years.

Counterfeiting
coin.

§ 72. Every person who shall counterfeit any of the species of gold and silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to pay or give in payment, such counterfeited coin, or permit, caused or procured the same to be altered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Having counter-
feited coin in pos-
session.

Uttering same.

§ 73. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current, or hereafter to be current, in this territory, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary, not less than one, nor more than fourteen years.

Having forged
bank notes, etc.,
in possession.

Unfinished bill,
etc.

§ 74. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank bill, or bills for the payment of money, with intention to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in, or belong to, this territory or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession, any blank or unfinished note or bank bill, made in the form or similitude of any promissory note or bill for payment of money, made to be issued by any incorporated bank or banking company in this territory or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause or

procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

§ 75. Every person who shall make, pass, utter or publish, Fictitious bills. with an intention to defraud any other person or persons, body politic or corporate, either in this territory or elsewhere, or with like intention, shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish, any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument in writing for the payment of money or property of some bank, corporation, co-partnership or individual, when in fact there shall be no such bank, corporation, co-partnership, or individual in existence, the said person, knowing the said bill, note, check or instrument of writing for the payment of money or property to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one, nor more than fourteen years.

§ 76. Every person who shall make, or knowingly have in his possession, any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever, made use of in counterfeiting the coin now current, or hereafter to be current, in this territory, or in counterfeiting bank notes or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines, intended for the purposes aforesaid, shall be destroyed. Having in possession dies, etc., used in forging coin.

§ 77. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation. Evidence.

§ 78. Persons of skill shall be competent witness to prove that such bill or note is forged or counterfeited.

§ 79. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officers, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, Forging seals, etc.

pardon, certificate or other writing, or who shall have in his possession or custody any counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted; shall be punished by confinement in the penitentiary, for a term not less than one, nor more than fourteen years.

OFFENSES BY PUBLIC OFFICERS.

Officers or persons entrusted with public money.

§ 79 *a*. If any officer or person who now is or hereafter may be entrusted by law to collect, receive, safely keep, disburse or pay over any money or moneys, revenue or revenues belonging to this territory or any county of this territory, to the school fund of this territory, to the school fund of any county or precinct of this territory, to any canal, turnpike or rail road fund of this territory or any county thereof, or to any fund for the improvement of any public road, river, creek or other water-course bordering on or within this territory, or to any other fund now in being or hereafter to be established by law for public purposes, shall directly or indirectly purchase or procure any order, warrant, certificate, or any other evidence of public indebtedness, to the payment of which such moneys, revenue or fund, is by law to be applied, at any loss, depreciation or discount below the nominal value thereof, or shall in any manner obtain any order, warrant, certificate, or other evidence of public indebtedness by any other means or manner than by the payment of the same according to law out of such public moneys, revenue or fund at the full nominal value thereof, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one nor more than three years.

Persons purchasing evidence of public indebtedness with money of public officer.

§ 79 *b*. If any person or persons shall buy, purchase, procure, or in any manner obtain, any order, warrant, certificate, or other evidence of public indebtedness, at any discount or depreciation with any private moneys, means or effects of any public officer, or with any such public money, revenue or fund mentioned in the preceding section, whereby such person or public officer shall reap any gain, profit or reward, he or they may be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine not exceeding one thousand dollars, and be imprisoned in the county jail not exceeding one year.

Officers converting public money into evidence of public indebtedness.

§ 79 *c*. If any person or officer within this territory charged with the collection, safe keeping, transfer or disbursement of public money, shall convert any of such public money into any order, warrant, certificate, or any evidence of public indebtedness, and shall deposit the same with any public officer of this territory, in lieu of money, he shall be guilty of a felony, and, upon conviction thereof,

shall be punished by confinement in the penitentiary, not less than one nor more than three years.

OFFENSES AGAINST PUBLIC POLICY.

§ 80. If any person shall subscribe or become a member of, or be in any way interested in any association or company formed for the purpose of issuing or putting in circulation any bill, check, ticket, certificate of deposit, promissory note, receipt, or other paper of any bank, to circulate as money in this territory, without being authorized so to do by charter from the general assembly of this territory, he shall be punished by imprisonment in the penitentiary, not more than one year, or by a fine not more than one thousand dollars.

Issuing bills,
etc., to circulate
as money.

CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

§ 81. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where, by law, an oath or affirmation is required, who shall swear or affirm, willfully, corruptly and falsely, in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Perjury.

Subornation.

§ 82. Every person, who, by willful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent persons, shall be deemed and adjudged guilty of murder, and, upon conviction thereof, shall suffer the punishment of death.

Death caused by
perjury.

§ 83. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or other authority before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

Indictment.

§ 84. If any person or persons shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward or any promise, contract, obligation or security for the payment or delivery of any money, present or reward or any other thing, to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting

Bribery.

within this territory, or to corrupt, induce or influence such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause depending or to be brought before him or them, or shall, directly or indirectly, give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward, or other thing, to obtain, procure or influence the vote of any member of the general assembly, or to incline, induce or influence any such member of the general assembly, to be more favorable to one side than the other, on any question, election, matter or thing pending, or to be brought before the general assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the general assembly, who shall in anywise accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, not less than one year nor more than five years.

§ 85. If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general or district attorney, member of the general assembly, or other officer, ministerial or judicial (but such fees as are allowed by law), with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than if required by law, or in consideration that such officer hath appointed any person to any office, or exercise any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and, on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than five years.

§ 86. Every person who shall offer or attempt to bribe any member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district attorney or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections; and every member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk,

constable, jailer, attorney general, district attorney or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

§ 87. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly or willfully take off, discharge or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book, or any proceeding whatever, of, or belonging to, any public office within this territory, the person so offending, and being thereof duly convicted, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than seven years.

Embezzling, altering, etc., of public record.

§ 88. Every jailer who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office.

Oppression of jailers.

§ 89. If any officer, whose office shall be abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall willfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year nor more than five years. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall willfully mutilate, destroy, withhold or detain the same as aforesaid.

Officer whose term has expired, withholding records, etc., from his successor.

§ 90. If any person shall without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary, for any term not less than one year nor more than ten years.

Personation.

§ 91. If any person shall, knowingly and willfully, obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this territory, or other person duly authorized, in serving or attempting to serve any lawful process or order of any court, judge or justice of the

Resisting officer.

peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or other officer, or person duly authorized, in serving or executing, or attempting to serve or execute any process or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual, under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Rescue of prisoners.

§ 92. If any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person, on conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

§ 93. If any person shall so set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable by confinement in the penitentiary, such person so offending shall be, on conviction, fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor, or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue, or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

§ 94. If the warden of the penitentiary, or any servant, officer or agent, belonging to, or in employment at the same, or any sheriff, deputy sheriff or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed; every such person, on conviction, shall be punished by confinement in said penitentiary, to solitary confinement, for a term not exceeding three months, and by confinement to hard labor for a term not exceeding ten years.

Escape of prisoners.

§ 95. If the warden of the penitentiary, or other person

as aforesaid, shall negligently suffer any convict committed, or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine not exceeding two hundred dollars.

§ 96. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary, or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine, not exceeding five hundred dollars, and imprisonment in the penitentiary, not exceeding six months. Conveying tools to prisoner.

§ 97. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding the sum for which said civil process issued. Rescue.

§ 98. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offense against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey, or cause to be delivered, to such prisoner, any disguise, instrument or arms, proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall, on conviction, be punished by fine, not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding one year. Aiding in escapes and rescues.

§ 99. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or attempt to rescue, any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person, who shall have the lawful custody of such prisoner; every person so offending, shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

§ 100. If any sheriff, coroner, jailer, keeper of a prison, constable or other officer or person whatever, having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at

large; every such officer or person so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder, or other capital offense, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars.

Refusal to arrest accused persons.

§ 101. If any sheriff, coroner, keeper of a jail, constable or other officer, shall willfully refuse to receive or arrest any person charged with a criminal offense, then such sheriff, coroner, jailer, constable or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months, in the common jail.

Compounding crimes,

§ 102. If any person shall take money, goods, chattels, lands or other reward, or promise thereof, to compound any criminal offense, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

Conspiracy.

§ 103. If any two or more persons shall conspire or agree, falsely and maliciously to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

Intruding into offices.

§ 104. If any person shall take upon himself to exercise or officiate in any office or place of authority in this territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

Embracery.

§ 105. Embracery is an attempt to influence a juror or jurors corruptly on one side by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror.

This section shall apply as well to the grand as the petit jurors.

§ 106. If any person or persons shall wickedly and willfully excite and stir up any suits or quarrels between the people of this territory, either at law or otherwise; with a view to promote strife and contention, every such person, so offending, shall be deemed to have committed the crime of *common barratry*, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counselor at law, he shall be suspended from the practice, for any time not exceeding six months.

§ 107. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party with money or otherwise, to prosecute or defend such suit, with a view to promote litigation, every such person, so offending, shall be deemed to have committed the crime of *maintenance*, and, upon conviction thereof, shall be fined and punished as in cases of *common barratry*: *Provided*, That it shall not be considered maintenance for a man to maintain the suit of his kinsman or servant, or poor neighbor, out of charity.

§ 108. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this territory, ministerial or judicial, shall willfully or corruptly receive or take any fee or reward, to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall willfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer, so offending, shall be deemed guilty of extortion, and, on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

§ 109. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney general, or district attorney, who shall be guilty of any palpable omission of duty, or who shall willfully or corruptly be guilty of oppression, malfeasance or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted, shall be removed from office. The court shall have power whenever any clerk of the district or supreme court, attorney general, or district attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk, or attorney general, or district attorney. It shall be

the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

Threatening letters.

§ 110. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable thing be demanded, such person, so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

OFFENSES AGAINST THE PUBLIC PEACE AND TRANQUILLITY.

Disturbing the peace.

§ 111. If any person, at late and unusual hours of the night time, maliciously or willfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging to fight or fighting, every person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisonment not exceeding two months.

Unlawful assemblages.

§ 112. If two or more persons assemble for the purpose of disturbing the public peace or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer, persons so offending, shall, on conviction, be severally fined, in any sum not exceeding fifty dollars, and imprisoned, not exceeding one month.

Affrays.

§ 113. If two or more persons shall, by agreement, fight in a public place to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray.

Unlawful assemblage.

§ 114. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing toward it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned, not exceeding three months.

Rout.

§ 115. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined, in a sum not exceeding seventy dollars, or imprisoned, not exceeding four months.

§ 116. If two or more persons actually do an unlawful ^{Riot.} act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent and tumultuous manner, the person so offending, shall be deemed guilty of a riot, and, on conviction, shall severally be fined, not exceeding two hundred dollars, or imprisoned not exceeding six months.

§ 117. If any judge, justice of the peace, sheriff or other officer bound to preserve the public peace, shall have know- ^{Neglect of duty by conservators of the peace.} ledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined, not exceeding one hundred dollars.

§ 118. If any person or persons shall, in any newspaper or handbill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned, for a term not exceeding three months. The publisher or printer of any such newspaper, handbill, or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall, in no case, be used in any prosecution against such witness. ^{Publishing handbill, etc., calling another a coward for not accepting a challenge, etc.}

§ 119. A libel is a malicious defamation, expressed either ^{Libel.} by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby expose him or her to public hatred, contempt or ridicule; every person, whether writer or publisher, convicted of this offense shall be fined in a sum not exceeding five hundred dollars, or imprisoned, not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

OFFENSES AGAINST THE PUBLIC MORALITY, HEALTH AND POLICE.

§ 120. Bigamy consists in the having of two wives or ^{Bigamy.} two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or per-

sons within this territory, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending, shall, on conviction thereof, be punished by a fine, not exceeding one thousand dollars, and imprisoned in the penitentiary, not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record of evidence; but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when such second marriage shall have taken place without this territory, cohabitation in this territory, after such second marriage, shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together prior to the second marriage, and he or she not knowing such husband or wife to be living within that time. Also, nothing herein contained shall extend to any person that is or shall be at the time of such second marriage, divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

Single persons
marrying the
wife or husband
of another.

§ 121. If any man or woman, being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined, not more than five hundred dollars, or imprisoned, not more than one year.

Adultery or for-
nication.

§ 122. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction, shall be fined, in any sum not exceeding two hundred dollars each, or imprisoned, not exceeding six months. This offense shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense such man or woman shall be severally punished twice as much as the former punishment, and for the third offense, treble, and thus increasing the punishment for each succeeding offense: *Provided, however,* That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

Incestuous mar-
riage.

§ 123. Marriages between parents and children, including grand parents and grand children of every degree, between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous and absolutely void. This

section shall extend to illegitimate as well as legitimate children and relations.

§ 124. Persons within the degrees of consanguinity within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by imprisonment in the penitentiary, not exceeding ten years.

Lascivious cohabitation with blood relations.

§ 125. If a father shall rudely and licentiously cohabit with his own daughter, the father shall, on conviction, be punished by confinement in the penitentiary, for a term not exceeding twenty years.

Father cohabiting with his daughter.

§ 126. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person, shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Public indecency.

Violation of Sabbath.

Disorderly houses.
Houses of ill fame.

§ 127. If any person shall hereafter bring, or cause to be brought or imported into this territory, for sale, or shall sell or offer to sell, any obscene book, pamphlet, print, picture or engraving; every such person shall, upon conviction, be fined in a sum not less than twenty-five dollars, nor more than fifty dollars.

Bringing obscene books, etc., for sale, etc.

§ 128. If any person shall, by himself, herself, servant or other agent, for his or her gain or profit, keep, have, exercise or maintain a common gaming house, table or room, or in any house or place occupied by him or her, procure or permit any persons to frequent or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Common gaming houses.

§ 129. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks or at billiards, or with any other article or instrument thing or things whatsoever, which may be used for the purpose of playing or betting upon or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending, shall be fined not exceeding one hundred dollars, and not less than ten dollars.

Gaming.

§ 130. Every tavern keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this chapter, to be played in his tavern or in any out

Tavern keepers permitting gaming.

Duty of officers.

house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed, as a tavern keeper, for one year from such conviction. It shall be the duty of all justices of the peace, sheriffs, coroners and grand jurors, now in office or hereafter to be appointed, to take notice and give information to the proper authorities, of such offenses as may be committed in their respective counties, contrary to the provisions of this chapter, whenever the same may in anywise come under their immediate observation. And if any officer whose duties it is made to execute the provisions of this chapter, shall neglect to enforce its provisions upon view or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Obstruction of public highways.

§ 131. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street or alley of any town or village, or any public bridge or causeway, or public river or stream declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture, or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereabouts; every person so offending, shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the court before whom the conviction may take place, be removed and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this chapter.

Abatement of nuisance.

Unwholesome provisions. Adulterated liquors.

§ 132. If any person or persons shall knowingly sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors, every person so offending shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

Illegal banking.

§ 133. If any person, number of persons, or corporation, in this territory, without special leave from the general assembly, shall emit or utter any bill of credit, make, sign, draw or endorse any bond, promissory note or writing, bill of exchange or order, to be used as a general circulating medium, as, and in lieu of, money or other currency, every such person or persons, or members of such corporation assenting to such proceedings, being thereof duly convicted,

shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

§ 134. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States or of this territory, or any proclamation, advertisement or notification set up at any place in this territory, by authority of any law of the United States or of this territory, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding fifty dollars nor less than five dollars, or imprisoned for a term not exceeding one month: *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up shall have expired.

Destruction, defacing, &c., public advertisements.

§ 135. If any person shall be found having upon him or her, any picklock, crow, key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.

Possession of burglar's implements.

Carrying offensive weapons.

§ 136. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who, after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in a sum not less than ten dollars, nor more than fifty dollars.

Refusing to join posse comitatus, &c.

§ 137. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains, of any deceased person or persons from the grave or place of sepulture, for the purpose

Disinterring dead bodies.

of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars: *Provided*, That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority: *And provided, also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends, to any other place of sepulture that he or she may think proper.

Illegal voting.

§ 138. If any person, being an elector, shall vote more than once at any election which may be held by virtue of any law of this territory, he shall, on conviction thereof, be fined, in any sum not exceeding one hundred dollars.

Bribery of voters.

§ 139. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined, not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this territory for five years.

Laboring on Sunday.

§ 140. Any person who shall hereafter knowingly disturb the peace and good order of society by labor or amusement on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, upon conviction thereof, in any sum not exceeding five dollars.

§ 141. The preceding section shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water, travelers or persons moving with their families, on the first day of the week; nor to prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a Sabbath, than the first day of the week.

Disturbing peace on Sunday.

§ 142. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person, so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined, in any sum not exceeding twenty-five dollars.

Disturbing religious meetings

§ 143. Any person who shall, by menace, profane swearing, vulgar language or any disorderly or immoral conduct, interrupt or disturb any congregation or collection of citizens assembled together for the purpose of worshiping Almighty God, or who shall sell or attempt to sell, or other-

wise dispose of ardent spirits or liquors, or any articles, which will tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding fifty dollars: *Provided*, That this section shall not be so construed as to affect any person who may sell whisky or any other ardent spirits at his own distillery, store or dwelling house.

§ 144. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, and may on view or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

§ 145. Any person who shall be accused of either of the offenses, specified in the five preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified; upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be filed with the clerk of the county; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and appropriated to the education of any poor orphan child or children of the proper county.

§ 146. The judgment rendered under the six preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

OFFENSES COMMITTED BY CHEATS, SWINDLERS AND OTHER FRAUDULENT PERSONS.

§ 147. All and every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived, with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being parties as aforesaid, at any time

Fraudulent conveyances.

shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them, as true and done, had or made in good faith, or upon good consideration, or shall sell, a lien or assign any of the lands, tenements, hereditaments, goods, chattels, or other things, before mentioned to him, her or them conveyed as aforesaid, or any part thereof, he, she or they so offending, shall, on conviction, be fined not exceeding one thousand dollars.

False representations,

§ 148. If any person, by false representations of his own respectability, wealth or mercantile correspondence and connections, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares or merchandise, or any valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined, not exceeding one thousand dollars, and imprisoned, not exceeding six months: *Provided*, That this section shall apply only to representations which shall have been reduced to writing, and signed by the party to be charged thereby, prior to the obtaining of such credit.

False pretence.

§ 149. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons, any *choses* in action, money, goods, wares, chattels, effects or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same, every person so offending shall be deemed a *cheat*, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned, not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done: *Provided*, That this section shall not apply to cases of sales of property on credit.

Selling land twice.

§ 150. Any person or persons, after once selling, bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year nor more than ten years.

§ 151. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he or she shall be deemed a *common cheat*, and on conviction, shall be fined, not less than two hundred dollars, and imprisoned, not exceeding three months.

Using false weights and measures.

FRAUDULENT AND MALICIOUS MISCHIEF.

§ 152. If any person shall willfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment or mill dam, or break or destroy the windows or doors of any dwelling house or other house, or shall set fire to or burn, or destroy, or procure, or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain of any kind, or shall cut down, girdle or destroy any fruit tree, or shade tree, or shall cut, pull down, or destroy any gate, post, railing or fence, or shall pull down, burn or destroy any pile or piles of wood, boards or planks, or other lumber, or shall overturn any cart, wagon or other carriage, or shall run them into sloughs, holes or other places, or shall cut loose or set adrift any canoe, ferry flat, skiff, boat or other vessel, for mischief, or shall unlawfully, wantonly, willfully or maliciously, kill, wound, disfigure or destroy any horse, mare, filly, colt or gelding, or any bull, ox, steer, bullock, cow, heifer or calf, or any sheep or lamb, or any hog, pig or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined, not exceeding one hundred dollars, or be imprisoned, not exceeding three months, or both.

Malicious mischief.

§ 153. If any person shall, willfully and intentionally, break down, pull down, or otherwise destroy or injure, in whole or in part, any public jail or other place of confinement, every person so offending, shall, upon conviction, be fined, in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

§ 154. If any person or persons shall, at any time hereafter, willfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever, in the inhabited parts of this territory, every person so offending, shall, on conviction, be fined in any sum not less than five dollars, nor more than one hundred dollars; *Provided*, That this section shall not extend to any person who shall set on fire, or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation or enclosure, for the necessary preservation thereof from accident by fire, between the first day of March and the last day of November, by giving

Firing woods and prairies.

to his or her neighbors two days' notice of such intention: *Provided, also,* That this section shall not be construed to take away any civil remedy, which any person may be entitled to for any injury which may be done or received in consequence of such firing.

CONSTRUCTION OF THIS CHAPTER AND DUTY OF COURTS AND GRAND JURY.

Grand jury.

§ 155. After the grand jury is impaneled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them; and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment, to be supported by good and sufficient evidence, to endorse thereon, "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to endorse thereon "not a true bill;" and shall in either case sign his name as foreman, at the foot of said endorsement; and shall also, in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

§ 156. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to wit:

You, as foreman of this inquest, do solemnly swear (or affirm, as the case may be), that you will diligently inquire into, and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching the present service; you shall present no person through malice, hatred or ill-will; nor shall you leave any unpresented through fear, favor or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments, you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding: So help you God.

And the following oath or affirmation shall be administered to the other jurors, to wit:

The same oath that A— B—, your foreman, has just taken before you on his part, you and each of you shall well and truly keep and observe on your respective parts: so help you God.

§ 157. No grand jury shall make presentments of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

§ 158. Every indictment or accusation of the grand jury, Indictment.
shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this code, or so plainly that the nature of the offense may be easily understood by the jury. The commencement of the indictment shall be in substance as follows:

TERRITORY OF NEBRASKA, }
County. } ss.

Of the term of the District Court, in the
year our Lord 18 .

The grand jurors, chosen, selected and sworn in and for the county of in the name and by the authority of the Territory of Nebraska, upon their oaths, present, etc. [Here insert the offense, the time and place of committing the same, with reasonable certainty.]

§ 159. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in the proof thereof, in the name of any county, precinct, city, town, borough, township, town corporate or place mentioned or described in any such indictment; or in the name or description of any person or persons, or body politic or corporate therein alleged or stated to be the owner or owners of any property real or personal, which shall form the subject of any offense charged therein; or in the name or description of any person or persons, body politic or corporate, therein stated or alleged to be injured or damaged or intended to be injured or damaged by the commission of such offense, or in the Christian name or surname or both Christian name and surname, or other description whatsoever of any person or persons whomsoever, therein named or described, or in the ownership of any property named or described therein, it shall be and may be lawful for the court before which the trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant can not be prejudiced thereby in his defense on such merits, to order such indictment to be amended, according to the proof, by some officer of the court, both in that part of the indictment where such variance occurs, and in every other part of the indictment which it may become necessary to amend on such terms as to postponing the trial to be had before the same jury or another jury, as such court shall think reasonable; and after any such amendment, the trial shall proceed, whenever the same shall be proceeded with, in the same manner in all respects and with the same consequences, both with respect to the liability of witnesses to be indicted for perjury or otherwise, as if no such variance had occurred, and the order

Error in indictment for felony, &c.

for amendment shall be endorsed on the indictment: *Provided*, That when any such trial shall be had before another jury, the territory and the defendant shall respectively be entitled to the same challenges as they were respectively entitled to before the first jury was sworn.

Verdict and judgment not to be affected by amendment of indictment.

§ 160. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this code, shall be of the same force and effect in all respects as if the same indictment had originally been in the same form in which it was after such amendment was made.

Record to be made after form of amended indictment.

§ 161. If it shall be necessary at any time, for any purpose whatever to draw up a formal record in any case when any amendment shall have been made under the provisions of this code, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.

§ 162. All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained for any matter not affecting the real merits of the offense charged in such indictment. No indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

Civil remedy not barred.

§ 163. Nothing in this chapter contained shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages and losses that he, she or they may have sustained, in consequence of the commission of any criminal offense herein punished; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby: *Provided, however*, The record of conviction shall not be used as evidence in any civil action brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offense.

Biennial reports.

§ 164. It shall be, and is hereby declared to be, the duty of the judges of the supreme and district courts, to make a special report biennially, to the legislature, of all such defects, omissions or imperfections in this code, as experience may suggest.

Punishment by death.

§ 165. The manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen nor more than sixty days from the time sentence is pronounced, unless, for good cause, the court or governor may prolong the time.

§ 166. The court may order, on the application of any respectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

Dissection of
body of crimi-
nals.

§ 167. This chapter shall extend to females committing any of the offenses made punishable by this chapter, although they may not be expressly named. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined; and the court, in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement in the penitentiary for any offense, except robbery, burglary or arson; in all other cases, where a penitentiary punishment is or shall be provided, such person, under the age of eighteen years, shall be punished by imprisonment in the county jail, for any term not exceeding eighteen months, at the discretion of the court.

Females re-
sponsible.

Confinement in
penitentiary.

Persons under
eighteen.

§ 168. All offenses herein defined shall be prosecuted and punished as by this chapter is prescribed, and not otherwise; and all other offenses may be punished by fine and imprisonment, in the discretion of the court: *Provided*, The fine shall in no case exceed one hundred dollars, and the imprisonment six months.

Common law of-
fenses.

§ 169. Whenever the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment or fine.

Duty of court.

§ 170. All fines imposed by virtue of any of the laws of this territory, for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county, unless otherwise especially directed: *Provided, however*, That nothing in this section contained shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

Fines to be paid
into county
treasury.

§ 171. The benefit of clergy, appeals of felony and trials by battle, shall be, and are hereby forever abolished.

Benefit of clergy
appeals of fel-
ony and trials
by battle abol-
ished.

§ 172. The court shall have power, in all cases of conviction under this chapter, when any fine is inflicted, to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged.

Order of com-
mitment until
fine and costs
are paid.

§ 173. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, willful and corrupt perjury or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, incest, larceny, for-

Infamous crimes

gery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter, be rendered incapable of holding any office of honor, trust or profit, of voting at any election, and of serving as a juror.

OF PROCESS, INDICTMENT, ARRAIGNMENT, TRIAL, JUDGMENT, EXECUTION AND WRIT OF ERROR.

Bail.
Duty of court,
clerk and sheriff.

Recognizance of
bail.

§ 174. It shall be the duty of the district court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offense bailable by law, to be indorsed on the process by the clerk; and the sheriff, coroner or other officer who shall arrest the indicted person or persons, shall let such indicted person or persons to bail upon his, her or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process, which recognizance shall be made to the Territory of Nebraska, conditioned for the appearance of the indicted person or persons, on the first day of the next district court to be holden in and for said county, to answer the said indictment, and not depart the court without leave, which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken is hereby declared to be valid and binding, and shall not be set aside or adjudged insufficient for want of form.

Capias.

§ 175. It shall be the duty of the clerks of the district courts of each county of this territory, to issue process of *capias* for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner and constable of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or, in case of his absence or inability, of the coroner or some one of the constables of the county to which said *capias* is directed, to arrest the person or persons therein named, and to let him or them to bail where the offense is bailable; or if the offense be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her or their bodies, to the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias*, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners in any jail on his route,

for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the county commissioners' court of the county where such indictment shall be found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section, shall prevent a *capias* from being issued without such indorsement, returnable *instanter*, which *capias* shall authorize and require the accused to be arrested and immediately brought into court, when he or she shall be either committed, bailed or tried at the term at which the indictment shall be found.

§ 176. It shall be the duty of the clerks of the district courts to issue subpœnas, either on the part of the territory or of the accused, in any indictment, directed, as in the preceding section, to any county in this territory. And every witness who shall be duly subpoenaed, and shall neglect or refuse to attend any district court, pursuant to the requisitions of such subpoena, shall be proceeded against and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such subpoena is returnable, may be served in the same manner as *capiases* are directed to be served, out of the county from which they issue in the preceding section.

§ 177. It shall not be necessary to issue a *venire* in any criminal case. And in all criminal cases where the panel of jurors shall be exhausted, by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors, not exceeding twenty-four, returnable *instanter*, out of which persons so ordered to be summoned, it shall be lawful to impanel a jury for the trial of any criminal case; but should the *tales* ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional *tales* men, returnable *instanter*, until a full jury shall be obtained.

§ 178. No bill of indictment for false imprisonment, or willful and malicious mischief, shall be found a "true bill" by any grand jury, unless a prosecutor is indorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty, in which case it shall be stated, at the end of the indictment, how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is indorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting each

Subpœnas.

Contempts.

Attachment.

Venire.

Tales.

Prosecutor's name to be indorsed on indictment in certain cases.

defendant shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the district attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

Copy of indictment and list of jurors and witnesses.

§ 179. Every person charged with treason, murder or other felonious crime or misdemeanor, shall be furnished previous to his trial, with a copy of the indictment, and a list of the witnesses; at his or her request, or the request of his or her counsel.

Arraignment.

§ 180. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the Territory of Nebraska and the prisoner; and if the clerk should neglect to insert in the minutes the arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

Plea.

Standing mute.

§ 181. In all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute or refusing to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment and execution, shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

Plea of guilty.

§ 182. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offense.

Challenge of jurors.

§ 183. Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offense that may be punished by imprison-

ment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the territory, shall be admitted to a peremptory challenge of six jurors, in all cases where the offense charged is punishable with death, and of three jurors in all other cases.

§ 184. In no case shall the right to a trial by jury *de mediatate linguæ*, be allowed in criminal prosecutions. Jury *de mediatate linguæ*.

§ 185. Where an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties. Crime committed on county line.

§ 186. In all complaints exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the territory only, and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where at least two witnesses to the same fact shall be necessary; and in finding a bill of indictment, at least twelve of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury. Indictment upon what evidence to be found.

§ 187. All trials for criminal offenses shall be conducted according to the course of the common law, except when this chapter points out a different mode, and the rules of evidence of the common law shall also, unless changed by this chapter, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact. Common law to govern.
Jury to try law and fact.

§ 188. When the jury shall retire to consider of their verdict in any criminal case, a constable or other officer shall be sworn or affirmed to attend the jury to some private and convenient place, and, to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, that he will not speak to them himself, except to ask them if they have agreed upon their verdict, nor suffer any other person to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however,* That in any cases of misdemeanor only, if the district attorney, and the person on trial, by himself or counsel, shall agree, which agreement shall be entered upon the minutes of the court, to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may sepa- Officer attending jury to be sworn.

rate; it shall be lawful for the court to carry into effect any such agreement and receive any such verdict so delivered to the clerk, as the lawful verdict of any such jury.

Costs. § 189. If any officer sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties that the jury shall separate without leave of the court, or obtain food or drink (except water), or if any person, not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending shall be punished for a contempt of the court, by fine or imprisonment, or both, in the discretion of the court.

Common law offences. § 190. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this chapter, or of any offenses at common law, the court shall give judgment that the offender or offenders, so convicted, shall pay the costs of the prosecution.

Lien. § 191. The property, real and personal, of every person who shall be convicted of any of the offenses punished by this chapter, shall be bound; and a *lien* is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution. And it shall be the duty of the clerk of the district court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases; in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property, under such execution, that the body is in custody for said fine and costs.

Execution.

Replevy of fine and costs. § 192. It shall and may be lawful for any person or persons, convicted of any criminal offense, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the district court, to the people of this territory, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared

valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements, of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, then no execution shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment, in consequence of any conviction, unless where imprisonment is by this chapter made a part of the punishment; in that case, such convicted person or persons shall be discharged from his or her, or their imprisonment, at the expiration thereof, if he, she or they, have replevied the fine and costs as aforesaid.

§ 193. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this territory. Execution may issued to any county.

§ 194. Whenever it shall be made satisfactory to appear to the district court, after all legal means have been exhausted that any person who is confined in jail for any fine or costs of prosecution, for any criminal offense, hath no estate wherewith to pay such fine and cost, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs; which discharge shall operate as a complete release of such fine and costs: *Provided*, that nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment. Release of fine and costs in certain cases.

§ 195. In all cases of bail for the appearance of any person or persons charged with any criminal offense, the security or securities of such person or persons may, at any time before judgment is rendered, upon *scire facias* to show cause why execution should not issue against such security or securities, seize and surrender such person or persons charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken; and it shall be the duty of such sheriff, on such surrender and the delivery to him of a certified copy of the recognizance by which such security or securities are bound, to take such person or persons, so charged as aforesaid, into custody, and by writing acknow. Surrender by bail.

ledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

Bill of exceptions.

§ 196. In the trial of any person or persons for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof, *Provided*, The truth of the case be fairly stated in such bill of exception; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

Writs of error.

§ 197. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the district court or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof in vacation; and if, after inspecting such transcript, the court or justice aforesaid shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted, by order indorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court, to issue a supercedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

Supersedeas.

§ 198. Writs of error in all criminal cases not capital, shall be considered as writs of right, and issue of course; but no writ of error shall be a supersedeas, unless the supreme court or one of the justices thereof, in vacation, after inspecting a copy of the record, certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error, then the writ shall be granted by order indorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall

have the effect to stay the execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall, at the same time be in custody, under the authority of the judgment prayed to be superseded, and the said court of justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner entering into a recognizance to the territory, before the sheriff of the county where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe; which recognizance shall be conditioned that the prisoner will appear at the next district court, to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the district court, on the first days, until the determination of such writs of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not at any of the terms of said court in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken, shall be returned to the next district court and there entered of record, and such proceedings may be thereon had, in case of a breach of the condition of such recognizance, as shall be according to the course of the common law: *Provided, however,* That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court, by virtue of this section; the said court shall order and direct the district court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

§ 199. When any defendant in any indictment or information in any court in this territory, shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or the minds of the inhabitants of the county wherein the trial is pending is prejudiced against him, such party may apply to the court in term time or the judge thereof in vacation, for a change of venue, by petition setting forth the cause of such application, verified by affidavit, reasonable previous notice having been given to the district attorney prosecuting for the district, and the court or judge may, in his discretion, award a change of venue to the next nearest county where the cause complained of does not exist; and in case the applicant be in custody or confined in jail, the court or judge shall make an order to the sheriff, to remove the body of such applicant to the common jail of the county

Change of venue

to which such venue is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined or held in custody, not more than three days next before the first day of the term of said court; and the sheriff shall obey such order accordingly, and shall indorse on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper at the jail of the proper county, who shall receive the same and give to the sheriff a receipt therefor, and shall take charge of and safely keep the prisoner in the same manner as if he originally had been committed to his custody: *Provided*, That there shall be but one *change of venue* in any criminal case, and that no change of venue shall be granted until after indictment found or information filed.

Changes of venue not to be granted after first term of court except in certain cases.

§ 200. Changes of *venue* shall not be granted after the first term of the court at which the party applying might have been heard, unless the party so applying shall show that the causes for which the change is asked, have arisen or come to his or her knowledge subsequent to the term at which the application might have been made, and shall also have given to the opposite party ten days' previous notice, of his or their intention to make such application, except in cases where the causes have arisen or come to the knowledge of the party making the application, within less than ten days of making the same.

Duty of judge and clerk of court on change of venue.

§ 201. When any judge shall award a change of venue in vacation, in any criminal cause, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writing, ordering and directing the change of venue, and such clerk shall file the same in his office, and shall make out a copy thereof and a full transcript of the record and proceedings in such case, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and pertaining and forming a part of the record, including the indictment and recognizance of the party and all witnesses, and the clerk of the court to which such cause is certified shall file the same, and the cause shall be docketed by such clerk and shall be proceeded in and determined by the court, in all things as well before and after judgment, as if it had originated therein.

Parties, witnesses, etc., to attend according to change.

§ 202. When the venue shall be changed in any criminal case, the parties, witnesses and all others who may have entered into recognizances to attend the trial of such cause, having notice of the change of venue, shall be, and are hereby required to attend at the time and place the trial is to be had, according to such change, and a failure to do, shall work a forfeiture of the recognizance.

§ 203. When the venue is changed in term time, in a criminal case, the district attorney shall have all witnesses on the part of the prosecution recognized to appear at the court, on the first day thereof, where the trial is to be had. Duty of district attorney.

§ 204. In all cases when a change of venue shall be ordered, in a criminal case, if the defendant shall be convicted and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court, and all costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury where the crime shall have been committed, if the defendant be unable to pay the same. Duty of sheriff.

LIMITATION OF INDICTMENTS AND PENAL ACTIONS.

§ 205. No person or persons shall be prosecuted, tried or punished, for any offense denominated by the common law felony (treason, murder, arson and forgery excepted), unless the indictment for the same shall be found by a grand jury, within three years next after the offense shall have been done or committed. Nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same, shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture: *Provided*, That nothing herein contained shall extend to any person fleeing from justice: *And provided, also*, That where any suit, information or indictment, for any crime or misdemeanor, is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute: *Provided, also*, That where any indictment, information or suit, shall be quashed, or the proceedings on the same set aside or reversed, on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information or suit, for the same offense. Limitation.

GENERAL PROVISIONS.

§ 206. The judges of the district courts, in their respective districts, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace within their respective jurisdictions, as herein designed. Conservators.

nated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offenses, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this territory, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame; and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats, as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior toward all the people of this territory, and particularly toward the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the district court. Such judge or justice of the peace shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable to the next district court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said district court shall, upon examination of the witnesses, deem to be just and right. And where the person or persons committed, are in jail at the sitting of such district court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard to the safety of the citizens of this territory.

Recognizance to keep the peace, etc.

Fresh pursuit. § 207. When any felonious offense shall be committed, public notice thereof shall be immediately given, in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons who shall be by any of them commanded or summoned for that purpose; every such officer who shall not do his duty in the premises shall be punished by fine, in a sum not exceeding one hundred dollars, or imprisonment, not exceeding three months.

Preliminary examination. § 208. It shall be lawful for any of the aforementioned judges or justices of the peace, upon oath or affirmation being made

before him, that any person or persons have committed any criminal offense in this territory, or that a criminal offense has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace; the said judge or justice of the peace before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offense, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all the witnesses attending; and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons, so charged, to jail, admit him, her or them to bail, or discharge him, her or them from custody. No justice of the ^{Bail.} peace shall admit to bail any person or persons charged with treason, murder, or any offense punishable with death. All recognizances taken in pursuance of this section, shall require the accused to appear at and on the first day of the next district court, or if the court be then sitting, on some day of the term, to be therein designated.

§ 209. It shall be the duty of the judge or justice of the peace, who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance, the prosecutor, and all such as do declare anything material to prove the offense charged, to appear before the next district court on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated (and, in all cases, at the same time and place as the person or persons accused by said witnesses shall be bound to appear), to give evidence touching the offense so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance or be otherwise discharged by due course of law. <sup>Witness to
recognized.</sup>

§ 210. All recognizances that have any relation to criminal matters, shall be taken to the Territory of Nebraska, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace or other officer taking the same, and delivered to the clerk of the district court, on, or before the day mentioned therein for the appearance of the witness or accused therein bound. <sup>Recognizance,
how taken.</sup>

Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

Bail.

§ 211. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offense punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to indorse on the warrant of commitment, in bailable cases, in what sum bail ought to be taken.

Penalty of prosecutor failing to appear.

§ 212. From and after the passage of this act, whenever any person have been bound, or shall be bound by any recognizances to keep the peace or for their good behavior, and for appearance of the party in the district court, if the prosecutor shall fail to appear and prosecute, or if upon the hearing it shall appear that a prosecution was commenced maliciously, without reasonable or probable cause, the court may in its discretion give judgment against the prosecutor for the costs of the prosecution and defense.

Warrant.

§ 213. When a charge shall be exhibited upon oath, before any judge or justice of the peace, against any person for a criminal offense, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners and constables within the territory; and it shall be the duty of any sheriff, coroner or constable, into whose hands any such warrant shall come, to execute the same within any county in which such offender may be found, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner or constable, or other person called to the assistance of such sheriff, coroner or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner or constable, or other person, may pursue such offender into such adjoining county and make the arrest, as if such offender had been found in the county of the officer in pursuit.

§ 214. Any judge or justice of the peace, issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant

anywhere in the territory by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county; and all sheriffs, coroners and constable, and others, when required, in their respective counties, to be aiding and assisting in the execution of such warrant.

§ 215. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer, to receive and detain such prisoner or prisoners, until he, she or they obtain bail, if the offense be bailable, or be otherwise discharged by due course of law.

§ 216. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offense, or warrant of commitment, or search warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal was affixed. And no person shall be discharged on *habeas corpus* from his imprisonment merely by reason of defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus* shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided*, Sufficient appear on the face of the *mittimus* to ascertain for what crime or offense such prisoner or prisoners shall have been committed.

§ 217. It shall be lawful for any judge or justice of the peace, upon complaint made before him, upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling house, out house, garden, yard, or other place or places, to issue a warrant, under his hand, commanding every such dwelling house or place to be searched in the day time; and if any of the goods described in any such warrant be found therein, then that the said goods be seized or brought before the judge or justice issuing said warrant. If, upon

Search warrants.

examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by said judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice, either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next district court after the goods shall or persons in whose possession such goods shall have been found, be seized, and an action shall not be commenced against the person for the recovery thereof, within one month after a district court shall have been held after such seizure, the said district court shall, at their next session, order such goods to be redelivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods may, at the time, be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

Mittimus.

§ 218. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

§ 219. Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall indorse on the said copy the names of the witnesses written thereon as aforesaid, and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer shall neglect to indorse the name of said witness or witnesses on a copy of said commitment, each justice, judge, sheriff or jailer offending in the premises, shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use of, any person who shall sue for the same in any court of record.

Habeas corpus.

§ 220. Whenever a *habeas corpus* shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or judge issuing the same shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpoena to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or

court, at the time and place when and where such *habeas corpus* shall be returnable; it shall be the duty of such sheriff to serve said subpoena, if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpoena, to attend and give evidence before the judge or court issuing the same, on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

§ 221. On the hearing of any *habeas corpus* issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offense mentioned in the warrant of commitment as aforesaid, whether said offense be technically set out in said commitment or not, and upon which hearing, said judge or court may either recommit, bail or discharge the prisoner, according to the facts of the case.

§ 222. This code and every other law upon the subject of crime, which may be enacted shall be construed according to the plain import of the language, in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words, upon pretence that he has offended against its spirit. Code, how to be construed.

§ 223. When the definition of an offense made penal by the law of this territory is *merely* defective, the rules of the common law shall apply, and be resorted to, for the purpose of aiding in the interpretation of such penal enactment. Common law.

§ 224. In the construction of this code, each general provision shall be controlled by a special provision, on the same subject if there be a conflict. Special provision to control.

§ 225. When the penalty of an offense is prescribed by one law, and is altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offense was committed, and, if convicted, punished under that law, except that when by the provisions of the second law the punishment of the offense is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offense was committed. Penalty prescribed by one law and altered by a subsequent one.

§ 226. When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in the next preceding statute shall apply. Repealing statute.

Repeal of a penal law exempts from punishment except otherwise declared.

§ 227. The repeal of a penal law when the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provisions of such repealed law, unless it be otherwise declared in the repealing statute.

Penalty not to be cumulative.

§ 228. No penalty affixed to an offense by one law shall be considered as cumulative of penalties under a former law, and in any case where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

Definition of an offence changed.

§ 229. If an offense be defined by one law, and by a subsequent law the definition of this offense is changed, no such change or modification shall take effect as to the offenders already committed, but all the offenses against the first law shall be tried and their guilt or innocence determined in accordance with the provisions thereof.

Offences committed, etc., under previous laws, not affected by their repeal.

§ 230. No offense committed, and no fine, forfeiture or penalty incurred under existing laws previous to the time when this code shall take effect shall be affected herein by the repeal of any such existing laws, but the punishment as such offenses, and the recovery of such fines and the forfeitures take place as if the laws repealed had still remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by the provisions of this code, such provisions shall apply to and control any judgment to be pronounced after this code shall take effect, for any offense committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

CUTTING TIMBER ON THE LAND OF ANOTHER.

Penalty.

§ 231. That every person who shall knowingly and willfully, without color of title made in good faith, cut, box, fell, bore or destroy any tree or sapling standing or growing upon the land of any person or corporation, without the license or consent of the owner of such land, shall be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one hundred dollars, or imprisoned in the county jail for any term not exceeding three months, in the discretion of the court in which such conviction is had.

Proceeding to be by indictment.

§ 232. That all offenders against this act shall be proceeded against by indictment, in the court of the proper county having cognizance of indictable offenses; on the trial of which indictment the owner or owners of the land upon which such trespass shall be committed, are hereby declared competent witnesses.

Witnesses, who may be,

Additional penalty.

§ 233. It shall be the duty of the court in all cases of conviction under this statute, when any fine is inflicted, to

order, as a part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid or otherwise legally discharged, and any judgment for fine and costs hereafter rendered under this act, may be enforced by execution, as in other criminal cases.

§ 234. Nothing in this act contained shall be so construed as to prevent the owner from having his election, and maintaining a civil action to recover damages for the trespasses declared criminal by this act, and that an indictment under this act shall be a bar to the recovery of the penalty given by the statute by action of debt. Land owners may elect civil or criminal suit.

§ 235. This action shall not apply to any traveler or marketer passing upon the highway, who, for the purpose of encampment and building camp fires, shall violate the provisions of this act, by cutting such trees or saplings as may be necessary for above purposes. Travelers, etc., not subject to penalty.

§ 236. That any black, colored or mulatto man and white woman, and any white man and black, colored or mulatto woman, or any white man and Indian woman or half breed, or any white woman and Indian or half breed, who shall live together in an open state of adultery or fornication, or adultery and fornication, shall be indicted; and on conviction, shall be severally fined in any sum not exceeding five hundred dollars, and confined in the penitentiary for any term not exceeding one year: *Provided*, That nothing in this act shall be construed to extend to any case in which the man and woman living together, as aforesaid, shall both be white person: *And provided, further*, That the offense herein provided for, shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense such man or woman shall be severally punished twice as much as for the first offense, and for the third offense trebling, and thus increasing the punishment for each succeeding offense. Indictment and conviction of colored and white persons when living in adultery.
Punishment.
Proviso.
Further proviso.
Double punishment for second offence.

AN ACT TO PROVIDE FOR THE CUSTODY OF CONVICTS.

§ 237. Until the erection of a territorial penitentiary, it shall be the duty of the district judge or judge before whom any conviction under the provision of this criminal code is had, to direct the sheriff of the county thereof to convey the convict or convicts, safely to any county jail in the territory that may be designated for his confinement by said court or judge, and it shall likewise be the duty of said sheriff to safely keep in custody and deliver said convict or convicts to the jailer thereof according to the order of the said court or judge or judges. Convicts where to be imprisoned before erection of a penitentiary.

The jailer of the county jail thus designated by the court as aforesaid, shall receive of the sheriff and keep said con-

vict or convicts, closely confined in said jail or at hard labor, until discharged by due course of law.

Penalty on sheriff and jailer.

§ 238. The sheriff or jailer, refusing or omitting to comply with the order of the court aforesaid or the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than six months nor more than one year, at the discretion of the court before whom the conviction is had.

Convict escaping.

§ 239. If any person confined in a place of confinement for any term less than for life, or in lawful custody going to the place of confinement, shall break such prison or custody, and escape therefrom, he shall upon conviction be punished by confinement for a term not exceeding five years to commence from the expiration of the original term of imprisonment.

Fines and forfeitures, how to be paid.

§ 240. All fines and forfeitures accruing by virtue of any of the provisions of this code shall be paid into the county treasury, one half thereof for the use of the school fund, to be distributed as other moneys, and the other half for the use of the respective counties where the prosecution or prosecutions are had: *Provided*, That wherever in this code moneys arising from certain fines and forfeitures are specially appropriated, such special and different appropriation shall prevail and be carried into effect.

ACT TO PREVENT FRAUD IN WAREHOUSEMEN AND OTHERS.

Fraudulent receipts prohibited.

§ 241. That no warehouseman, wharfinger or other person, shall issue any receipt or other voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide* received into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

No person to issue receipts on property not his own.

§ 242. That no warehouseman, wharfinger or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce or commodity, to any person or persons, as security for any money loaned or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be, at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

No second receipt to be issued while first outstanding.

§ 243. That no warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares,

merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled.

§ 244. That no warehouseman, wharfinger or other person, shall sell, or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. Transfer of goods prohibited without consent of person holding receipt.

§ 245. Any warehouseman, wharfinger or other person, who shall violate any of the foregoing provisions of this act, shall be deemed a cheat and subject to indictment, and, upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person aggrieved by the violation of any of the provisions of this act, may have and maintain a civil action against the person or persons violating any of the foregoing provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under this act or not. Penalty, fine and imprisonment.

AN ACT TO PUNISH THE FRAUDULENT ISSUE AND TRANSFER OF STOCK IN CORPORATIONS.

§ 246. That every president, cashier, treasurer, secretary or other officer, and every agent of any bank, rail road, manufacturing, or other corporation, who shall willfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or semi-related certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, for the signing, issuing, selling or pledging of which such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony, and every such person or persons shall be liable to indictment, and on conviction, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine. False issue and transfer of stock.

§ 247. That every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employee of any bank, rail road, manufacturing or other cor- Liable to indictment.

poration, and every other person who shall knowingly and designedly, and with intent to defraud any person or persons, bank, rail road, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged any false, fraudulent or semi-related certificate or other evidence of ownership, of any share or shares of the capital stock of any bank, rail road, manufacturing or other corporation, every such person so issuing, selling, transferring, assigning or pledging, or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction, shall be punished by fine, not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

EXCEPTIONS AND WRITS OF ERROR IN CRIMINAL CASES.

Exception to the opinion of of the courts, etc., allowed in criminal cases. § 248. That exceptions taken to opinions or decisions of any court in this territory, overruling motions in arrest of judgment for new trials, or for continuances or change of venue, shall be allowed in criminal cases and in penal and *qui tam* actions; and the party excepting to such decisions may assign the same for error, in the same manner as in civil cases,

DEFINITIONS.

General terms. § 249. The general terms "*whoever*," "*any person*," "*any one*," and the relative pronouns "*he*" and "*they*," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "*man*" is used to signify a male person of any age, and the word "*woman*" a female person of any age.

Words expressive of relationship. § 250. The use of any word expressive of the *relationship, state, condition, office or trust of any person, as of parent, child, ascendant, descendant, minor, infant, ward, guardian*, or the like or of the relative pronouns *he* or *they* in reference thereto, includes both males and females.

Singular and plural number. § 251. The use of the singular number includes the plural, and the plural the singular, and the words used in the masculine gender include the feminine also, unless by reasonable construction it appears that such was not the intention of the language.

Persons or any general term. § 252. Whenever any property or interest is intended to be protected, by a provision of the penal law, and the general term "*person*," or any other general term, is used to designate the "*party*" whose property is intended to be protected, the provisions of such penal laws and the protection thereby given, shall extend to the property of the territory, or of any county, and of all public or private corporations.

§ 253. The word "accused" is intended to refer to any Accused.* person who, in any legal manner, is held to answer for any offense at any stage of the proceedings, or against whom complaint in a lawful manner is made, charging the commission of an offense, including all proceedings, from the order for arrest to the final execution of the law, and the word "defendant," is used in the same sense.

§ 254. A criminal action as used in this code, means the Criminal action. whole and any part of the procedure which the law provides for bringing offenders to justice, and the terms "prosecution," "criminal prosecution," "accusation" and "criminal accusation," in the same sense.

§ 255. An "accused person," is termed a convict after Accused person when termed a convict. final condemnation by the highest court of resort, which by law has jurisdiction of his case, and to which he may have thought proper to appeal.

§ 256. The term "criminal process" is intended to signify Criminal process. any *capias*, *warrant*, *citation*, *summons*, *attachment*, or other written precept or order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money or for whatever other purpose used.

§ 257. The word "writing" includes *printing*; the word Writing and oath. "oath" includes *affirmation*.

§ 258. The word "signature" includes the *mark* of a Signature. person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person and the mark is made near thereto by the person unable to write his name.

§ 259. Except where a word, term or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed. Terms not defined how to be taken.

§ 260. And be it further enacted, that all civil rights Civil rights under former acts. which have accrued under any former act or law of this territory are hereby reserved and continued, and the same may be prosecuted to judgment and enforced by execution and satisfaction, and that all violations of the criminal law heretofore in force may be proceeded with by indictment and trial, or other lawful or proper proceeding or proceedings, to conviction and punishment, the same as if this criminal code had not been enacted.

§ 261. This criminal code shall take effect and be in Take effect. force from and after its passage.

FORMS :

The following forms may be substantially followed, varying the terms to suit the case:

FORM OF INFORMATION.

THE TERRITORY OF NEBRASKA, }
County, } ss.

The complaint and information of A B, of said county, made before C D, esquire, one of the justices of the peace in and for said county, on the day of , 18 , who being duly sworn, on his own oath says that the crime of (larceny) has been committed in the county of , (and that one E F committed the same) or say (and that he has just and reasonable grounds to suspect that one E F hath committed the same).

Subscribed and sworn to }
before me, }

C D, Justice of the Peace.

FORM OF A WARRANT.

THE TERRITORY OF NEBRASKA, }
County, } ss.

In the name and by the authority of the Territory of Nebraska.

To all sheriffs, constables and coroners of said Territory (and to , esquire, if directed to a private person):

It appearing that E F has committed the crime of (larceny) in the

county of _____, you are therefore commanded forthwith to arrest E F and bring him before me or some other magistrate of said county, to be dealt with according to law.

A B, Justice of the Peace.

FORM OF ORDER THEREON WHEN SUCH WARRANT IS TO BE EXECUTED BY A PERSON THEREIN NAMED.

Ordered, That *John Doe*, named in the within warrant, be hereby authorized to execute the same.

(Date.)

A B, Justice of the Peace.

FORM OF COMMITMENT FOR FURTHER EXAMINATION.

THE TERRITORY OF NEBRASKA, }
County, } ss.

In the name and by the authority of the Territory of Nebraska.
To the keeper of the common jail of said county:

Receive into your custody, and safely keep for further examination, E F, who is charged before me with having committed the offense of (larceny).

Given under my hand this }
day of _____, 18____, }

A B, Justice of the Peace of said county.

FORM OF AN ORDER TO BRING UP A PRISONER FOR EXAMINATION.

THE TERRITORY OF NEBRASKA, }
County, } ss.

In the name and by the authority of the Territory of Nebraska.
To the keeper of the common jail of said county:

You are hereby commanded to bring E F, a prisoner in your custody, to my office in _____ in said county for further examination.

Given under my hand this }
day of _____, 18____, }

A B, Justice of the Peace.

FORM OF SUBPENA FOR WITNESSES TO ATTEND AN EXAMIN- ING COURT.

THE TERRITORY OF NEBRASKA, }
County, } ss.

In the name and by the authority of the Territory of Nebraska.

To any sheriff or constable of said county:

You are commanded to summon A, E, I, O and U, to be and appear before me at my office at _____, in said county, forthwith (or on the _____ day of _____, instant, at _____ o'clock in the _____ noon), to testify the truth in behalf of the plaintiff (or defendant), on the examination of the charge against E F, of having committed the offence of (larceny).

Given under my hand this }
day of _____, 18____, }

A B, Justice of the Peace of said county.

FORM OF OATH OF WITNESSES ON THE EXAMINATION.

You do solemnly swear that the evidence you shall give between the Territory of Nebraska and E F, touching the charge exhibited against him, now in hearing, shall be the truth, the whole truth, and nothing but the truth; so help you God.

FORM OF AFFIRMATION.

You do solemnly, sincerely and truly declare and affirm that the evidence you shall give between the Territory of Nebraska and E F touching the charge exhibited against him, now on trial, shall be the truth, the whole truth, and nothing but the truth; and this you do under the pains and penalties that may ensue thereon.

FORM OF A RECOGNIZANCE OF BAIL.

THE TERRITORY OF NEBRASKA, }
against }
E F } *For the offense of Larceny.*

Be it remembered that on the _____ day of _____ 18____, A of _____ county, Nebraska, and B of _____ county, Nebraska, appeared personally before

me A B, a justice of the peace of county, and severally acknowledged themselves jointly indebted to the Territory of Nebraska, in the sum of dollars, to be made and levied of their respective goods, chattels, lands and tenements, to be void however if the said E F, shall personally appear at the next (October) term of the district court of county, on the first day thereof, or if the recognizance be taken in term time, then it must require the party to appear on some day of the term to be herein designated to answer to an indictment preferred against him for the offense of (larceny) and to do and receive what shall be by said court, then and there enjoined upon him, and shall not depart the said court without leave.

Witness our hands, this day of 185 ,

A.
B.

Taken, subscribed and acknowledged, the }
day and year first above written }

A B, Justice of the Peace.

RECOGNIZANCE OF A WITNESS.

THE TERRITORY OF NEBRASKA, }
 against } *For the offense of Larceny.*
E F

Be it remembered, that on the day of 18 , that G H, of the county aforesaid, appeared before me, a justice of the peace of said county, and acknowledged himself indebted to the Territory of Nebraska, in the sum of dollars, to be levied on his goods, chattels, lands and tenements, to be void however upon his appearing in the district court of said county of , on the first day of its next (October) term (or if the recognizance is taken in term time, then it must require the witness to appear on some day of the term, to be herein designated), to testify on behalf of the plaintiff (or defendant) in the above named prosecution, and not depart without leave of said court.

G. H.

Taken, subscribed and acknowledged, the }
day and year above written. }

A B, Justice of the Peace.

FORM OF MITTIMUS IN OFFENSES NOT BAILABLE.

THE TERRITORY OF NEBRASKA, }
 County, } ss.

In the name and by the authority of the Territory of Nebraska.

To the keeper of the common jail of said county.

You are commanded to receive into the jail of county, E F, and him safely keep until discharged by due course of law, he having been held by me as an examining court for trial in the district court of county, on the charge of after first having inquired into the truth and probability of said charge exhibited against him by the oath of all the witnesses attending such examination.

Given under my hand, as Justice of the Peace, }
 of county, this day of 18 , }

A B, Justice of the Peace.

FORM OF MITTIMUS IN BAILABLE CASES.

THE TERRITORY OF NEBRASKA, }
 County, } ss.

In the name and by the authority of the Territory of Nebraska.

To the keeper of the common jail of said county:

You are commanded to receive into the jail of county, E F, and him safely keep until discharged by due course of law, he having been held by me as an examining court for trial, in the district court of county, on the charge of (larceny), after having first inquired into the truth, and probability of said charge exhibited against him by the oath of all the witnesses in attendance on such examination, and allowed to give bail in the sum of dollars, for default of which he is committed to jail.

Given under my hand, as justice of the peace, }
 of county, this day of 18 , }

A B, Justice of the Peace.

FORM OF AN INDORSEMENT ON THE FOREGOING.

Bail ought to be taken in the sum of dollars.

A B, Justice of the Peace.

FORM OF BAIL AFTER COMMITMENT.

THE TERRITORY OF NEBRASKA, }
 County, } ss.

Be it remembered that on the day of , 18 , E F, of
 county, Nebraska, and G H and I J, of county, Nebraska, ap-
 peared personally before the undersigned, two justices of the peace of
 county, and severally and jointly acknowledged themselves in-
 debted to the Territory of Nebraska, in the sum of dollars, to be
 made and levied on their respective goods, chattels, lands and
 tenements, to be void, however, if the said E F, who has been commit-
 ted to the common jail of county, shall personally be and appear
 at the next term of the district court of county, on the first day
 thereof, to answer an indictment to be preferred against him, for the
 offence of (larceny), and to do and receive what shall be by said court
 enjoined upon him, and shall not depart the said court without leave.

Witness our hands this day of , 18 .

E F
 G H
 I J.

Taken, subscribed and acknowledged the }
 day and year first above written. }

A B, Justice of the Peace.

K L, Justice of the Peace.

FORM OF COMMITMENT OF WITNESS FOR REFUSING TO
ENTER INTO A RECOGNIZANCE.

THE TERRITORY OF NEBRASKA, }
 County, } ss.

In the name and by the authority of the Territory of Nebraska.

To any constable of said county and to the keeper of the common jail
 thereof:

We command you the said constable forthwith to convey and deliver
 into the custody of the said keeper, the body of C D, it appearing by
 the examination of the said C D on oath, before me, one of the justices
 of the peace of said county, that he is a material witness against the said
 E F, on a charge of (larceny), and it having been adjudged by me, that
 the said offense has been committed and that there is probable cause
 to believe the said E F to be guilty thereof, and the said C D, having
 been required to enter into recognizance in the sum of dollars
 for his personal appearance at the next term of the district court

of county, on the first day thereof, to give evidence on behalf of the territory against the said E F for the offence aforesaid, with which requisition the said C D has refused to comply, and you the said keeper of the said jail are hereby required to receive the said C D into your custody, in the said jail, and him safely keep until he shall enter into such recognizance or be otherwise discharged according to law.

Given under my hand this }
 day of 18 , }

A B, Justice of the Peace.

FORM OF A WARRANT TO DISCHARGE A PRISONER UPON HIS FINDING SURETIES AFTER COMMITMENT.

THE TERRITORY OF NEBRASKA, }
 County, } ss.

In the name and by the authority of the Territory of Nebraska.

To the keeper of the common jail of said county:

Discharge from imprisonment E F, if detained in your custody for no other cause than what is mentioned in the warrant for his commitment, under the hand of A B, justice of the peace for said county, dated the
 day 18 .

Given under hand as Justice of the Peace }
 of said county, this day of 18 . }

A B, Justice of the Peace.

K L, Justice of the Peace.

CODE OF CIVIL PROCEDURE.

AN ACT to establish a Code of Civil Procedure.

Be it enacted by the Council and House of Representatives of the Territory of Nebraska, as follows :

PRELIMINARY PROVISIONS.

SEC. 1. This act shall be known as the Code of Civil Procedure of the Territory of Nebraska.

§ 2. The rule of the common law, that statutes in derogation thereof, are to be strictly construed, has no application to this Code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object, and assist the parties in obtaining justice.

TITLE I.

FORM OF CIVIL ACTIONS.

SEC. 3. The distinction between actions at law, and the forms of all such actions and suits, heretofore existing, are abolished; and in their place, there shall be, hereafter, but one form of action, which shall be called a civil action.

Distinction between actions at law abolished. One form of action.

§ 4. In such action, the party complaining, shall be known as the plaintiff, and the adverse party as the defendant.

Parties, how designated.

§ 5. There can be no feigned issues; but a question of fact, not put in issue by the pleadings, may be tried by a jury, upon an order for the trial, stating, distinctly and plainly, the question of fact to be tried, and such order is the only authority necessary for a trial.

Feigned issues abolished.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

Chapter 1.—ACTIONS IN GENERAL.

2.—ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

3.—ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

4.—GENERAL PROVISIONS.

CHAPTER I.

ACTIONS IN GENERAL.

Suits pending and rights of action which have accrued not affected.

SEC. 6. This title shall not apply to actions already commenced, or to cases where the right of action has already accrued; but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to the form; nor shall this title apply in the case of a continuing and subsisting trust, or to an action by a vender of real property, in possession thereof, to obtain a conveyance of it.

When civil actions shall be commenced.

§ 7. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, but where, in special cases, a different limitation is prescribed by statute, the action may be commenced accordingly.

CHAPTER II.

ACTION FOR THE RECOVERY OF REAL PROPERTY.

For the recovery of real property twenty-one years.

SEC. 8. An action for the recovery of the title, or possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of such action shall have accrued.

Right of action saved to persons under certain disabilities.

§ 9. If a person entitled to commence any action for the recovery of the title or possession of any lands, tenements, or hereditaments, be, at the time his right or title shall first descend, or accrue, within the age of twenty-one years, a married woman, insane, or imprisoned; every such person may, after the expiration of twenty-one years from the time his right or title first descended, or accrued, bring such action within ten years after such disability is removed, and at no time thereafter.

Forcible entry and detention.

§ 10. An action for the forcible entry and detention, or forcible detention only, of real property, can only be brought within two years after the cause of such action shall have accrued.

CHAPTER III.

ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

SEC. 11. Civil actions other than for the recovery of real property, can only be brought within the following periods after the cause of action shall have accrued.

§ 12. Within fifteen years:

An action upon a specialty, or any agreement, contract, or promise in writing. Obligations in writing fifteen years.

§ 13. Within six years:

An action upon a contract not in writing, express or implied. Contracts not in writing six years.

An action upon a liability created by statute, other than a forfeiture or penalty.

§ 14. Within four years:

An action for trespass upon real property. Trespass four years.

An action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property.

An action for an injury to the rights of the plaintiff not arising on contract, and not herein after enumerated.

An action for relief on the ground of fraud; the cause of action in such case shall be deemed to have accrued, until the discovery of the fraud.

§ 15. Within one year:

An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment. Libel, slander assault, battery, &c., one year.

An action upon a statute for the penalty or forfeiture; but where the statute giving such action, prescribes a different limitation, the action may be brought within the period so limited.

§ 16. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff or any other officer; or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by statute, can only be brought within ten years after the cause of action shall have accrued; but this section shall be subject to the qualification in section seven. Actions upon official bonds, ten years.

§ 17. An action for relief, not heretofore provided for, can only be brought within ten years after the cause of action shall have accrued. Other relief within ten years.

§ 18. If a person entitled to bring any action mentioned in this chapter, except for a penalty, or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this chapter, after such disability shall be removed. Right of action saved to persons under certain disabilities.

CHAPTER IV.

GENERAL PROVISIONS.

When an action
deemed com-
menced under
this title.

SEC. 19. An action shall be deemed commenced within the meaning of this title, as to each defendant, at the date of the summons, which is served on him, or on a co-defendant, who is a joint contractor or otherwise united in interest with him; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication must be regularly made.

Attempt, when
equivalent to a
commencement.

An attempt to commence an action, shall be deemed equivalent to the commencement thereof, within the meaning of this title, when the party faithfully, properly, and diligently endeavors to procure a service; but such attempt must be followed by service within sixty days.

§ 20. If when a cause of action accrues against a person, he be out of the territory, or have absconded, or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the territory, or while he is so absconded or concealed; and if after the cause of action accrues, he depart from the territory, or abscond, or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

Actions barred
in another state
are barred here.

§ 21. Where the cause of action has arisen in another state or country between non-residents of this territory, and by the laws of the state or country where the cause of action arose, an action can not be maintained thereon by reason of lapse of time, no action can be maintained thereon in this territory.

When judgment
is reversed, one
year to bring a
new action.

§ 22. If an action be commenced within due time, and a judgment therein for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action, within one year after such reversal or failure.

When payment,
acknowledg-
ment or promise,
revives the cause
of action.

§ 23. In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt, or claim, or any promise to pay the same, shall have been made, an action may be brought on such case within the period prescribed for the same, after such payment, acknowledgment or promise.

TITLE III.

PARTIES TO CIVIL ACTIONS.

SEC. 24. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section twenty-six. Action to be in the name of real party in interest.

§ 25. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense now allowed; but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith and upon good consideration, before due. Assignment of a thing in action not to prejudice a defense.

§ 26. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorized by law, and official bonds may be sued upon in the same way. Executor or trustee may sue without the beneficiary.

§ 27. Where a married woman is a party, her husband must be joined with her; except, when the action concerns her separate property, she may sue without her husband, by her next friend. Husband must join in action, except when she may sue without him.

When the action is between herself and her husband, she may sue or be sued alone; but in every such action other than for a divorce or alimony, she shall prosecute and defend by her next friend.

§ 28. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also. How wife may defend.

§ 29. The action of an infant must be brought by his guardian or next friend. When the action is brought by his next friend, the court has power to dismiss it, if it is not for the benefit of the infant; or, to substitute the guardian of the infant, or any person, as the next friend. Infant must sue by his guardian or next friend.

§ 30. The guardian or the next friend is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either may be a witness in an action brought by him. Guardian or next friend liable for costs, and may be a witness.

§ 31. The defense of an infant must be by a guardian for the suit, who may be appointed by the court, in which the action is prosecuted, or by a judge thereof, or by a probate or county judge. The appointment can not be made until after service of the summons in the action, as directed by this code. Infant to defend by guardian.

§ 32. The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and Guardian how appointed.

apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

Who may be joined as plaintiffs.

§ 33. All persons having an interest in the subject of the action and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

Who may be made defendants.

§ 34. Any person may be made a defendant, who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties united in interest must be joined.

§ 35. Of the parties to the action, those who are united in interest must be joined, as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff, can not be obtained, he may be made a defendant, the reason being stated in the petition.

When one may sue or defend for all.

§ 36. When the question is one of a common or general interest of many persons; or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

Persons severally liable may any or all be included in one action.

§ 37. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

Actions not to abate by death marriage or other disability.

§ 38. An action does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, during its pendency, if the cause of action survive or continue. In the case of a marriage of a female party, the fact being suggested on the record, the husband may be made a party with his wife; and in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party; or the court may allow the person to whom the transfer is made, to be substituted in the action.

Proceedings in such case.

If controversy can not be decided without prejudice to others they must be brought in.

§ 39. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy can not be had without the presence of other parties, the court must order them to be brought in.

In an action for property all interested may be made parties.

§ 40. When, in an action for the recovery of real or personal property, any person having an interest in the property, applies to be made a party, the court may order it to be done.

Upon affidavit of defendant before answer, that an

§ 41. Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal

property, that some third party, without collusion with him, has or makes a claim to the subject of the action and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party being served with a copy of the order, by the sheriff or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit, or delivery thereof.

other claims property, court may make order for its safe keeping, &c.

If third party fail to come in he is barred.

He may be made defendant.

§ 42. The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under execution, or for the proceeds of such property so taken and sold by him. And the defendant in such action shall be entitled to the benefit of those provisions against the party, in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

Last section to apply to sheriff and he have benefit of it.

§ 43. In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.

In action vs. officer for property, plaintiff in execution may be substituted.

TITLE IV.

THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

SEC. 44. Actions for the following causes, must be brought in the county in which the subject of the action is situated, except as provided in section forty-five: 1. For the recovery of real property, or of an estate or interest therein; 2. For the partition of real property; 3. For the sale of real property under a mortgage, lien, or other incumbrance or charge.

Certain actions must be brought in the county where the property is situated.

§ 45. If the real property the subject of the action, be an entire tract and situated in two or more counties, or if

Where the property is situated in two or more

counties, the action may be brought in either, except as to the action for the possession of real property.

it consists of separate tracts situated in two or more counties the action may be brought in any county in which any tract or part thereof, is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof, may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

Certain actions must be brought in county where the cause arose.

§ 46. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. An action for the recovery of a fine, forfeiture or penalty, imposed by a statute; except that, when it is imposed for an offense committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water course, or road, and opposite to the place where the offense was committed.

2. An action against a public officer, for an act done by him in virtue, or under color of, his office, or for a neglect of his official duty.

3. An action on the official bond or undertaking of a public officer.

Where actions may be brought against a corporation.

§ 47. An action other than one of those mentioned in the first three sections of this chapter, against a corporation created by the laws of this territory, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

Where actions against railroads &c., may be brought.

§ 48. An action against a rail road company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county, through or into which the said road or line passes.

Where, against a turnpike company.

§ 49. An action other than one of those mentioned in the first three sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies.

Exemption, where the charter provides otherwise.

§ 50. The provisions of this chapter shall not apply in the case of any corporation created by a law of this territory, whose charter prescribes a place, where alone a suit against such corporation may be brought.

Where an action against a non-resident may be brought.

§ 51. An action other than one of those mentioned in the first three sections of this chapter, against a non-resident of this territory or a foreign corporation, may be brought in any county in which there may be property of, or debts

owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county, where the cause, or some part thereof, arose.

§ 52. Every other action must be brought in the county in which the defendant, or some one of the defendants, resides, or may be summoned. Every other action where defendant resides.

§ 53. In all cases in which it shall be made to appear by affidavit to the satisfaction of the court, that a fair and impartial trial can not be had in the county where the suit is pending, the court may change the place of trial to some adjoining county, wherein such impartial trial can be had; but if the objection shall be against all the counties of the district, then to the nearest county in the adjoining district. When place of trial may be changed.

TITLE V.

COMMENCEMENT OF A CIVIL ACTION.

Chapter 1.—MANNER OF COMMENCING CIVIL ACTIONS.

2.—SERVICES OF SUMMONS.

CHAPTER I.

MANNER OF COMMENCING CIVIL ACTIONS.

SEC. 54. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing a summons to be issued thereon. Civil action commenced by petition and summons.

§ 55. The plaintiff shall also file, with the clerk of the court, a precipe, stating the names of the parties to the action, and demanding that a summons issue thereon. Precipe for summons.

§ 56. The summons shall be issued by the clerk, shall be under the seal of the court, from which the same shall issue, and shall be signed by the clerk. Its style shall be, "The Territory of Nebraska, — county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant, or defendants, named therein, that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name, at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly. And where the action is for the recovery of money only, there shall be endorsed on the writ, the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the defendant fail to answer. If the defendant fail to ap- Requisites of a summons.

pear, judgment shall not be rendered for a larger amount and the costs.

Where action is rightly brought in any county, summons may issue to another county.

§ 57. Where the action is rightly brought in any county, according to the provisions of title four, a summons shall be issued to any other county, against any one, or more, of the defendants, at the plaintiff's request.

When summons returnable.

§ 58. Where the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the first day of the next term after the day of its date. It shall state the day of the month on which it is returnable.

When further writs may be issued.

§ 59. When a writ is returned "not summoned," other writs may be issued, until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

CHAPTER II.

SERVICE OF SUMMONS.

Actual Service.

By whom summons may be served.

SEC. 60. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be indorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this territory, the return shall be verified by oath or affirmation.

Manner of service.

§ 61. The service shall be by delivering a copy of the summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day.

Time and manner of service to be stated.

§ 62. In all cases, the return must state the time and manner of service.

When to return the summons.

§ 63. The officer to whom the summons is directed, must return the same at the time therein stated.

What equivalent to a service.

§ 64. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to a service.

How served on a corporation.

§ 65. A summons against a corporation, may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office or last usual place of business of such corporation.

§ 66. Where the defendant is an incorporated insurance company, and the action is brought in a county, in which there is an agency thereof, the service may be upon the chief officer of such agency. May be served on an agent of an insurance company.

§ 67. Where the defendant is a foreign corporation, having a managing agent in this territory, the service may be upon such agent. On the agent of a foreign corporation.

§ 68. When the defendant is a minor under the age of fourteen years, the service must be upon him, and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults. Infants, how served.

Constructive Service.

§ 69. Service may be made by publication in either of the following cases: Service by publication.

In actions brought under the forty-fourth and forty-fifth sections of this code, where any or all of the defendants reside out of the territory.

In actions brought to establish or set aside a will, where any or all the defendants reside out of the territory.

In actions brought against a non-resident of this territory, or a foreign corporation, having in this territory property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way.

In actions which relate to, or the subject of which is, real or personal property in this territory, where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the territory or a foreign corporation.

And in all actions where the defendant being a resident of the territory has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

§ 70. Before service can be made by publication, an affidavit must be filed, that service of a summons can not be made within this territory, on the defendant, or defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication. What affidavit necessary.

§ 71. The publication must be made four consecutive weeks, in some newspaper printed in the county where the Publication how made.

petition is filed, if there be any printed in such county; and if there be not, in some newspaper printed in this territory of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

When such service is complete and how proved.

§ 72. Service by publication shall be deemed complete, when it shall have been made in the manner and for the time prescribed in the preceding section; and such service shall be proved by the affidavit of the printer, or his foreman, or principal clerk, or other person knowing the same.

Service of summons out of the territory.

§ 73. In all cases where service may be made by publication, personal service of a copy of the summons and complaint may be made out of the territory.

Judgment against party served by publication may be opened upon terms.

§ 74. A party against whom a judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened, and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intentions to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action, he had no actual notice thereof, in time to appear in court and make his defense; but the title to any property, the subject of the judgment or order sought to be opened, which, by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceeding under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action, the applicant had notice thereof, in time to appear in court and make his defense.

Effect on purchasers.

How to proceed in actions against unknown heirs.

§ 75. In actions where it shall be necessary to make the heirs or devisees of any deceased person, defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residence, are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service, as may be deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

Proceedings where there are several defendants and part only served.

§ 76. Where the action is against two or more defendants and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted

upon contract, he may proceed against the defendants served, unless the court otherwise direct.

2. If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

§ 77. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. Pendency of action protects plaintiff's title.

§ 78. When any part of the real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the register's office of such other county or counties, before it shall operate therein as a notice, so as to charge third persons as provided in the preceding section. It shall operate as such notice, without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute now in force, which does not require such record. Judgment to be notice only in the county where rendered unless recorded elsewhere.

TITLE VI.

JOINDER IN ACTIONS.

§ 79. The plaintiff may unite several causes of action in the same petition, when they are included in either one of the following classes: What causes of action may be joined in the same action.

1. The same transaction or transactions connected with the same subject of action.

2. Contracts, express or implied.

3. Injuries, with or without force, to person and property, or either.

4. Injuries to character.

5. Claims to recover the possession of personal property, with or without damages for the withholding thereof.

6. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same.

7. Claims against a trustee, by virtue of a contract, or by operation of law.

§ 80. The causes of action so united, must affect all the parties to the action, and not require different places of trial.

TITLE VII.

PLEADINGS IN CIVIL ACTIONS.

Chapter 1.—PLEADINGS IN GENERAL.

2.—THE PETITION.

3.—DEMURRER.

4.—ANSWER.

5.—REPLY.

6.—GENERAL RULES OF PLEADING.

7.—MISTAKES IN PLEADING AND AMENDMENTS.

CHAPTER I.

PLEADINGS IN GENERAL.

Pleadings.

SEC. 81. The pleadings are the written statements by the parties of the facts, constituting their respective claims and defenses.

Rules of pleadings heretofore existing abolished.

§ 82. The rules of pleading, heretofore existing in civil actions, are abolished; and hereafter the forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined, are those prescribed by this code.

Pleadings allowed by the code.

§ 83. The only pleadings allowed, are,

1. The petition by the plaintiff.
2. The answer or demurrer by the defendant.
3. The demurrer, or reply by the plaintiff.

CHAPTER II.

THE PETITION.

The petition what to contain.

SEC. 84. The petition must contain,

1. The name of the court and the county in which the action is brought, and the names of the parties, plaintiff and defendant, followed by the word "Petition."

2. A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition.

3. A demand of the relief to which the party supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated; and if interest thereon be claimed, the time from which interest is to be computed, shall also be stated.

Each cause of action to be stated.

§ 85. Where the petition contains more than one cause of action, each shall be separately stated and numbered.

CHAPTER III.

DEMURRER.

SEC. 86. The defendant may demur to the petition only when it appears on its face, either, When defendant may demur.

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action.

2. That the plaintiff has not legal capacity to sue.

3. That there is another action pending between the same parties for the same cause.

4. That there is a defect of parties, plaintiff or defendant.

5. That several causes of action are improperly joined.

6. That the petition does not state facts sufficient to constitute a cause of action.

§ 87. The demurrer shall specify distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only, that the petition does not state facts sufficient to constitute a cause of action. Demurrer must specify grounds of objection.

§ 88. When any of the defects enumerated in section eighty-six, do not appear upon the face of the petition, the objection may be taken by answer; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action. Objections not appearing on face of petition may be taken by answer. When objection deemed waived.

§ 89. When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs in its discretion, to file several petitions, each including such of said causes of action as might have been joined; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service. If causes of action be misjoined, court may direct separate suits.

§ 90. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue. Defendant may demur to part and answer part.

CHAPTER IV.

ANSWER.

SEC. 91. The answer shall contain,

1. A general or specific denial of each material allegation of the petition controverted by the defendant. The answer and what it must contain.

2. A statement of any new matter constituting a defence, counter-claim or set-off, in ordinary and concise language and without repetition.

§ 92. The defendant may set forth in his answer as many grounds of defence, counter-claim and set-off as he may. Different ground of defence may

be set forth in the answer.

have. Each must be separately stated and numbered, and they must refer in an intelligible manner to the cause of action which they are intended to answer.

Counterclaim, of what it consists.

§ 93. The counter claim, mentioned in the last section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

No costs recoverable on counter claim or set-off in certain cases.

§ 94. If the defendant omit to set up the counter-claim or set-off, he can not recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of, or withdrawn from the answer, as provided in sections ninety-five and one hundred and eighteen.

New party to be made if necessary.

§ 95. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made by a summons, to reply to the counter-claim, or may direct the counter-claim to be stricken out of the answer, and made the subject of a separate action.

Set-off, what and when it can be pleaded.

§ 96. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

New party to be made if necessary.

§ 97. When it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appear that owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

When cross demands are to be deemed compensated.

§ 98. When cross demands have existed between persons under such circumstances, that if one had brought an action against the other, a counter-claim or set-off could have been set up, neither can be deprived of the benefit thereof, by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

Guardian, &c., to deny allegations of the petition.

§ 99. The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

CHAPTER V.

REPLY.

SEC. 100. There shall be no reply, except upon the allegation of a counter-claim or set-off in the answer.

What the reply may contain.

§ 101. When the answer contains new matter, constituting a counter-claim or set-off, the plaintiff may reply to such

new matter, denying generally or specifically each allegation controverted by him; and he may allege, in ordinary and concise language and without repetition, any new matter not inconsistent with the petition, constituting a defense to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof: and he may demur to one or more of such defenses set up in the answer, and reply to the residue.

CHAPTER VI.

GENERAL RULES OF PLEADING.

§ 102. The answer or the demurrer by the defendant, and the reply or demurrer by the plaintiff, shall be filed within such times as may be required by rules to be adopted by the court in which the action is pending. Times for plead-
ing.

§ 103. The court, or the judge thereof in vacation, for good cause shown, may extend the time for filing an answer or reply, upon such terms as may be just. Time for plead-
ings may be ex-
tended.

§ 104. Every pleading in a court of record, must be subscribed by the party or his attorney. Pleadings to be
subscribed.

§ 105. Every pleading of fact must be verified by the affidavit of the party, his agent or attorney. A pleading verified as herein required, shall not be used against a party in any criminal prosecution or action, or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party. Pleadings to be
verified.

§ 106. The verification mentioned in the last section, shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor in any case where the admission of the truth of a fact stated in the pleading, might subject the party to a criminal or penal prosecution. Certain plead-
ings are not to be
verified.

§ 107. If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties. One of several
parties may
verify.

§ 108. The affidavit shall be sufficient if it state that the affiant believes the facts stated in the pleading to be true. What affidavit
sufficient.

§ 109. In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading; stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby. Verification of
non-resident of
the county.

Verification to be signed and certified.

§ 110. The affidavit verifying pleadings, may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken, shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself and that he was such officer.

When verification shall apply to the amount claimed.

§ 111. The verification of the pleading does not apply to the amount claimed, except in actions founded on contracts express or implied, for the payment of money only.

Verification by agent or attorney.

§ 112. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney, only.

1. When the facts are within the personal knowledge of the agent or attorney.

2. When the plaintiff is an infant, or of unsound mind, or imprisoned.

3. When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney.

4. When the party is not a resident of or is absent from the county.

Pleadings to be liberally construed.

§ 113. In the construction of any pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Fictions abolished.

§ 114. All fictions in pleading are abolished.

No change of title to a cause.

§ 115. The title of a cause shall not be changed in any of its stages.

Copies of notes, &c., to be filed with pleadings.

§ 116. If the action, counter-claim or set-off be founded on an account, or on a note, bill or other written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, except in actions founded upon notes issued to circulate as money. If not so attached and filed, the reason thereof must be shown in the pleading.

Redundant or irrelevant matters may be stricken out.

§ 117. If redundant, scandalous or irrelevant matter be inserted in any pleading, it may be stricken out, on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and uncertain, that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Counterclaim or set-off may be made the subject of a separate proceeding.

§ 118. The court, at any time before the final submission of the cause, on motion of the defendant, may allow a counter-claim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time

such counter-claim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

§ 119. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Facts conferring jurisdiction need not be stated.

§ 120. In pleading the performance of conditions precedent in an contract, it shall be sufficient to state, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Performance of conditions precedent need not be specially stated.

§ 121. In an action, counter-claim or set-off, founded upon an account, promissory note, bill of exchange or other instrument, for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and indorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

What sufficient to state in actions upon written instrument.

§ 122. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Pleading statute.

§ 123. In an action for a libel or slander, it shall be sufficient to state generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial, the facts, showing that the defamatory matter was published or spoken of him.

Pleading in actions for libel or slander.

§ 124. In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

Defendant may allege truth of the matter and mitigating circumstances.

§ 125. In an action for the recovery of real property, it shall be described with sufficient certainty, as will enable an officer holding an execution to identify it.

Real property must be described.

§ 126. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer, constituting a counter-claim or set-off, not controverted by the reply, shall, for the purposes

Every material allegation not controverted to be taken as true.

of the action, be taken as true; but the allegation of new matter in the answer, not relating to a counter-claim or set-off, or of new matter in reply, shall be deemed to be controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them.

What is a material allegation.

§ 127. A material allegation in a pleading, is one essential to the claim or defense, which could not be stricken from the pleading, without leaving it insufficient.

Presumptions of law, &c., need not be stated.

§ 128. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.

Copies of pleadings may be substituted.

§ 129. If an original pleading be lost, or withheld by any person, the court may allow a copy thereof to be substituted.

CHAPTER VII.

MISTAKES IN PLEADING, AND AMENDMENTS.*

Variance in pleading not material, unless the adverse party has been misled.

SEC. 130. No variance between the allegation in a pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defense upon the merits. Whenever it is alleged, that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as may be just.

Fact to be found according to evidence and amendment made.

§ 131. When the variance is not material, as provided in the last section, the court may direct the fact to be found, according to the evidence, and may order an immediate amendment without costs.

If claim or defense is wholly unproved—not a case of variance.

§ 132. When, however, the allegation of the claim or defense, to which the proof is directed, is unproved, not in some particular, or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

Plaintiff may amend his petition without leave before answer.

§ 133. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the defendant shall have the same time to answer or demur thereto, as to the original petition.

Amendments on demurrer.

§ 134. At any time within ten days after a demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of filing an amended pleading, shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading.

§ 135. Upon a demurrer being overruled, the party who demurred may answer or reply, if the court be satisfied that he has a meritorious claim, or defense, and did not demur for delay.

Party may reply after his demurrer is overruled.

§ 136. The court may, before judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceeding to the facts proved. And whenever any proceeding taken by a party fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment.

Court may amend pleadings at any time.

§ 137. The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings, which does not affect the substantial rights of the adverse party; and no judgment shall be reversed, or affected, by reason of such error or defect.

Court shall disregard errors not affecting substantial rights.

§ 138. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied, by way of amendment, with, or without costs, as the court in its discretion shall direct.

If demurrer sustained amendments may be allowed.

§ 139. When either party shall amend any pleading, or proceeding, and the court shall be satisfied by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

After amendment further time may be granted for trial.

§ 140. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when his true name is discovered, the pleading or proceeding may be amended accordingly. The plaintiff in such case must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant.

When a party may be sued by a fictitious name.

§ 141. Either party may be allowed on notice, and on such terms as to costs, as the court may prescribe, to file a supplemental petition, answer, or reply, alleging facts material to the case, occurring after the former petition, answer, or reply.

Supplemental petition, answer or reply.

§ 142. Whenever two or more actions are pending in the same court, which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no such cause be shown, the said several actions shall be consolidated.

Actions which might have been joined, may be consolidated.

When order may
be made.

§ 143. The order for consolidation may be made by the court, or by a judge thereof in vacation.

PROVISIONAL REMEDIES.

Chapter 1.—ARREST AND BAIL.

2.—REPLEVIN OF PROPERTY.

3.—ATTACHMENT.

4.—INJUNCTION.

5.—RECEIVERS AND OTHER PROVISIONAL REMEDIES.

CHAPTER I.

ARREST AND BAIL.

Arrest in civil
actions only as
prescribed by
the code.

SEC. 144. A defendant in a civil action, can be arrested before, and after judgment, in the manner prescribed by this code, and not otherwise; but this provision does not apply to proceedings for contempt; nor does it apply to actions or judgments prosecuted in the name of the territory of Nebraska to recover fines or penalties for crimes, misdemeanors or offenses.

By whom, and
when an order
of arrest is to be
made.

§ 145. An order for the arrest of the defendant, shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent, or attorney, made before any judge of any court of the territory, or clerk thereof, or justice of the peace, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars:

1. That the defendant has removed, or begun to remove, any of his property out of the jurisdiction of the court, with intent to defraud his creditors.

2. That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors.

3. That he has property, or rights of action, which he fraudulently conceals.

4. That he has assigned, removed, disposed of, or has begun to dispose of his property, or a part thereof, with intent to defraud his creditors.

5. That he fraudulently contracted the debt, or incurred the obligation, for which suit is about to be, or has been brought.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

§ 146. The order of arrest shall not be issued by the clerk, until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit. Not to be issued unless bond is given.

§ 147. The order may be made to accompany the summons, or at any time afterwards, before judgment. When it may issue.

§ 148. The order of arrest shall be addressed, and delivered, with a copy of the affidavit, to the sheriff. The order shall state the names of the parties, the court in which the action was brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant, and hold him to bail in double the sum stated in the affidavit, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given. The order of arrest and its contents.

§ 149. The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be fifteen days after it issued. When returnable.

§ 150. The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof, and of the affidavit. If the defendant can not be found before the return day, the plaintiff shall be entitled to further orders without other affidavit, or undertaking, until the defendant is arrested; but orders of arrest shall not be issued to any other than the county in which the action is brought. How executed.

§ 151. The defendant, when arrested, shall be committed by the sheriff to the jail of the county, and kept in custody until discharged by law. What to be done with defendant.

§ 152. The defendant may before, or after giving bail, deposit in the hands of the sheriff, or in the court, the amount of money mentioned in the order of arrest; whereupon he shall be discharged, or his bail, if any be given, shall be released. Defendant may deposit money and be discharged.

§ 153. The sheriff shall pay into court the money received by him in lieu of bail; if received in vacation, he shall pay it on the first day of the next term, if received during a term, he shall pay it immediately. Money to be paid into court.

§ 154. The court shall make proper orders for the safe keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and after final judgment in the action, shall order it to be paid to the party entitled thereto, according to the result. Court to have control of money.

§ 155. Money so deposited with the sheriff, in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties Sheriff and sureties liable for such money.

shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency.

Defendant may give bail.
How done. § 156. Bail may be given by the defendant on his arrest, or at any time afterwards, before judgment. It shall be done by causing one or more sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking, when accepted, shall be returned to the clerk's office, and the defendant discharged.

Plaintiff may object to bail. § 157. The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking of the bail has been given; within such time he shall serve upon the sheriff a written notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. When the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof.

Justification of bail. § 158. On the receipt of such notice, the sheriff, or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice in writing of the justification of the same, or other bail, before a judge, or clerk of the court, in which the action is brought, a county judge, or justice of the peace, at a specified time and place: the time to be not less than five nor more than ten days thereafter. In case other bail be given, there must be a new undertaking.

Manner of justification. § 159. For the purpose of justification, each of the bail must attend before the proper officer at the time and place mentioned, and may be examined on oath or affirmation touching his sufficiency, in such manner as the officer may think proper.

Allowance of bail. § 160. If the officer finds the bail sufficient, he shall indorse his allowance on the undertaking, and cause the same to be filed with the clerk; and the sheriff shall thereupon be discharged from liability.

When sheriff liable as bail and how discharged. § 161. If after being arrested, the defendant escape or be rescued, or bail be not taken or be adjudged insufficient, or a deposit be not made, the sheriff shall be liable as bail. But he may discharge himself from liability by putting in sufficient bail at any time before judgment.

Liability of sheriff, how fixed and sued. § 162. The return of "not found" upon an execution against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest and cost. This liability can be enforced only, in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency.

§ 163. The bail adjudged insufficient, shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency. Bail adjudged insufficient liable to sheriff.

§ 164. The liability of the bail shall be fixed in the manner provided in section one hundred and sixty-two, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only. Liability of bail, how fixed and sued.

§ 165. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender be made by the defendant himself or by his bail, shall discharge the bail; and such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody upon said copy of the undertaking of the bail, as upon an order of arrest. On the production of the sheriff's acknowledgment of the surrender, to the clerk of the court, an exoneration of the bail shall be entered on his undertaking. Defendant may be surrendered in discharge of bail.

§ 166. For the purpose of surrendering the defendant, the bail, at any time or place, before he is finally charged, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so. Bail may arrest the defendant.

§ 167. The bail will be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execution thereof, within the time fixed in section one hundred and sixty-five, or within such further time as the court in which the action is pending may allow. What will exonerate bail.

§ 168. If money be deposited by the defendant in his discharge, bail may be given and justified upon notice as prescribed in section one hundred and fifty-eight at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly. Bail may be substituted for a deposit of money.

§ 169. If, at any time before or after judgment against the bail, proceedings in error are commenced, on the judgment against the principal in the suit, in which their undertaking was taken, the court may, on motion, stay proceedings against such bail for a reasonable time, on their paying all the costs that have accrued against them; and if, on such proceedings, the judgment against the principal shall be reversed, and the principal discharged from said suit, the bail shall be discharged from the undertaking. When proceedings against bail may be stayed, and bail discharged.

Defendant may move to vacate the order of arrest or reduce the amount of bail.

§ 170. A defendant arrested may at any time before the justification of the bail, apply on motion, to the court in which the suit is brought, if in session, and in vacation, to a judge thereof, or to any judge of a court of record of the territory, to vacate the order of arrest, or to reduce the amount of bail. Reasonable notice of such motion must be given to the plaintiff.

Motion may be supported and opposed by affidavit.

§ 171. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of arrest was made.

Jail fees to be paid by plaintiff.

§ 172. Any person causing another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for jail fees, and shall, if required by the jailer, pay such fees weekly in advance; and such fees, so paid, shall be a part of the costs of the case.

CHAPTER II.

REPLEVIN OF PROPERTY.

When delivery of property may be claimed.

SEC. 173. The plaintiff in an action to recover the possession of specific personal property, may at the commencement of the suit, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Affidavit of plaintiff and causes for delivery.

§ 174. An order for the delivery of property to the plaintiff, shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing:

1. A description of the property claimed.
2. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.
3. That the property is wrongfully detained by the defendant.

4. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against the plaintiff.

Order of delivery and its contents.

§ 175. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

When returnable.

§ 176. The return day of the order of delivery, when issued

at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

§ 177. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence. How executed.

§ 178. The sheriff or other officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in, at least, double the value of the property taken, to the effect, that the plaintiff shall duly prosecute the action and pay all costs and damages, which may be awarded against him. The undertaking shall be returned with the order. Plaintiff to give bond.

§ 179. For the purpose of fixing the amount of the undertaking, the value of the property taken, shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof. Value of property how fixed.

§ 180. If the undertaking, required by section one hundred and seventy-eight, be not given, within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages. Officers' duty and liability as to the property if plaintiff fail to give bond.

§ 181. The defendant may, within twenty-four hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided, or until they justify. The property shall be delivered to the plaintiff, when the undertaking, required by section one hundred and seventy-eight, has been given. Qualification of sureties, &c.

§ 182. If the property have been delivered to the plaintiff, and judgment be rendered against him on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied, that said property was the property of the defendant, at the commencement Proceedings in the action.

of the action, or if they shall find that the defendant was entitled to the possession only of the same, at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

Proceedings in
the action.

§ 183. In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined, for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

Proceedings in
the action.

§ 184. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the court shall render judgment for defendant.

Proceedings in
the action.

§ 185. When the property claimed has not been taken, or has been returned to the defendant by the sheriff, for want of the undertaking required by section one hundred and seventy-eight, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and seventy-eight, the plaintiff shall pay all costs made by taking the same.

Orders may be
issued to differ-
ent counties.

§ 186. An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

When officer
may break open
buildings.

§ 187. The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure, in which the property claimed or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

When action
may be brought
on plaintiff's
bond.

§ 188. No suit shall be instituted on the undertaking given under section one hundred and seventy-eight, before an execution issued on a judgment in favor of the defendant in the action, shall have been returned, that sufficient property, whereon to levy and make the amount of such judgment, can not be found in the county.

When order may
be set aside at
clerk's costs.

§ 189. Any order for the delivery of property issued under section one hundred and seventy-four, without the affidavit required thereby, shall be set aside at the cost of the

clerk issuing the same, and such clerk, as well as the plaintiff, shall, also, be liable in damages to the party injured.

CHAPTER III.

ATTACHMENT.

Article 1. GENERAL ATTACHMENTS.

2. ATTACHMENTS IN CERTAIN ACTIONS.

ARTICLE I.

GENERAL ATTACHMENTS.

Subdivision 1. GROUNDS OF ATTACHMENT.

2. HOW ATTACHMENT OBTAINED.

3. EXECUTION AND RETURN THEREOF.

4. DISPOSITION OF ATTACHED PROPERTY.

5. PROCEEDINGS UPON ATTACHMENT.

6. GENERAL PROVISIONS.

SUBDIVISION 1.

Grounds of Attachment.

SEC. 190. The plaintiff, in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated. Grounds of attachment.

1. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this territory; or,

2. Has absconded with the intent to defraud his creditors; or,

3. Has left the county of his residence, to avoid the service of a summons; or,

4. So conceals himself, that a summons can not be served upon him; or,

5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,

7. Has property, or rights in action, which he conceals; or,

8. Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or,

9. Fraudulently contracted the debt, or incurred the obligation for which suit is about to be, or has been brought.

But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident

of this territory, for any claim other than a debt or demand arising upon contract, judgment, or decree.

SUBDIVISION 2.

How an Attachment is obtained.

Affidavit necessary.

§ 191. An order of attachment shall be made by the clerk of the court, in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office, an affidavit of the plaintiff, his agent or attorney, showing

1. The nature of the plaintiff's claim.
2. That it is just.

3. The amount which the affiant believes the plaintiff ought to recover; and

4. The existence of some one of the grounds for an attachment, enumerated in the preceding section.

When bond not required.

§ 192. When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of this territory, the order of attachment may be issued without an undertaking.

When bond required.

In all other cases, the order of attachment shall not be issued by the clerk, until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages, which he may sustain by reason of the attachment, if the order be wrongfully obtained.

Order of attachment, how executed.

§ 193. The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Orders of attachment may issue to several counties.

§ 194. Orders of attachment may be issued to the sheriffs of different counties; and several of them may at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed, shall be taxed in the costs, unless otherwise directed by the court.

When returnable.

§ 195. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

SUBDIVISION 3.

Execution and Return thereof.

§ 196. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff. When several to be executed in the order received.

§ 197. The order of attachment shall be executed by the sheriff without delay. He shall go to the place where the defendant's property may be found, and there in the presence of two residents of the county, declare that by virtue of said order, he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and residents, and returned with the order. How order executed.

Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order.

Where it is personal property, and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

§ 198. The sheriff shall deliver the property attached, to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court, that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound. When property attached may be delivered to the person with whom found.

§ 199. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to and does believe, that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer can not come at such property, he shall leave with such garnishee, a copy of the order of attachment, with a written notice, that he appear in court, at the return of the order of attachment, and answer, as provided in section two hundred and thirteen. Proceedings against a garnishee.

§ 200. The copy of the order and the notice shall be served upon the garnishee, as follows: How served.

If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president, or other officer of the same, or a managing agent thereof.

Different attachments may be made by the same officer.

§ 201. Different attachments of the same property may be made by the same officer, and one inventory and appraisal shall be sufficient, and it shall not be necessary to return the same with more than one order.

§ 202. Where the property is under attachment, it shall be attached under subsequent orders as follows:

1. If it be real property, it shall be attached in the manner prescribed in section one hundred and ninety-seven.

2. If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment.

3. If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section one hundred and ninety-nine.

Form of return.

§ 203. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall, also, return with the order all undertakings given under it.

When property and garnishee bound.

§ 204. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section one hundred and ninety-nine; but where the property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

SUBDIVISION 4.

Disposition of Attached Property.

Receiver may be appointed.

§ 205. The court, or any judge thereof during vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the Territory of Nebraska, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of the court, for the faithful performance of his duty as such receiver, and to pay over all money, and account for all property, which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.

Shall take possession of notes and books and settle the same.

§ 206. Such receiver shall take possession of all notes, due-bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own

name as such receiver; but in such actions no right of defense shall be impaired or affected.

§ 207. Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. Shall give notice of his appointment.

The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

§ 208. Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court. Shall report his proceedings.

§ 209. Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and five, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. When a receiver is not appointed the sheriff shall perform the same duties.

He may be required to give security, other than his official undertaking.

§ 210. The court shall make proper orders for the preservation of the property, during the pendency of the suit. It may direct a sale of property, when, because of its perishable nature or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court may judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirement and responsibilities of himself and sureties, as are provided in respect to money deposited in lieu of bail. How property attached disposed of.

SUBDIVISION 5.

Proceedings upon Attachment.

§ 211. If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties, resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of Defendant may discharge attachment any time before judgment.

the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

May be done in vacation.

§ 212. The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the sureties in either case to be approved by the officer before whom the undertaking is executed.

Garnishee shall appear and make disclosure.

§ 213. The garnishee shall appear as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer, under oath, all the questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice.

Garnishee may pay money to sheriff or into court.

§ 214. A garnishee may pay the money owing to the defendant by him, to the sheriff having the order of attachment, or into court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

When garnishee may be attached for contempt.

§ 215. If the garnishee do not appear in court and answer, as required by section two hundred and thirteen, the court may proceed against him by attachment as for a contempt.

Disposition of property in hands of garnishee.

§ 216. If the garnishee appear and answer, and it is discovered on his examination, that at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct.

When plaintiff may proceed in action against the garnishee.

§ 217. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the court, to deliver the property and pay the money owing

into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

§ 218. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys, and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

As to the action against garnishee.

§ 219. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached; or its proceeds shall be returned to him.

If judgment be for defendant attachment discharged.

§ 220. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations, as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and the execution may issue thereon, for the residue in all respects as in other cases. Any sur-

If judgment be for plaintiff, money and property to be subjected to its payment.

plus of the attached property, or its proceeds, shall be returned to the defendant.

Court may enforce the delivery of property, as for contempt.

§ 221. The court may compel the delivery to the sheriff, for sale of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments as in cases of contempt.

May order sheriff to repossess himself of property attached.

§ 222. The court may order the sheriff to repossess himself, for the purpose of selling it, any of the attached property which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property, as he would have under an order of attachment.

When property is claimed by a third person how to proceed.

§ 223. If personal property which has been attached, be claimed by any person other than the defendant, it shall be the duty of the officer to have the validity of such claim tried and such proceedings must be had thereon, with the like effect, as in case the property had been seized upon execution, and claimed by a third person.

When question of priority may be referred.

§ 224. Where several attachments are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments.

SUBDIVISION 6.

General Provisions.

Proceedings not to end by death of the defendant.

§ 225. From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings under this chapter; and if, after the issuing of the order, the defendant being a person, should die, or a corporation, and its charter should expire by limitation, forfeiture or otherwise, the proceeding shall be carried on; but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

When plaintiff may be required to give additional security.

§ 226. The defendant may, at any time before judgment after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this territory, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff.

Motion to discharge attachment.

§ 227. The defendant may at any time before judgment, upon reasonable notice to the plaintiff, move to discharge

an attachment, as to the whole or a part of the property attached.

§ 228. If the motion be made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made. What evidence may be used on such motion.

ARTICLE II.

ATTACHMENTS IN CERTAIN ACTIONS.

SEC. 229. 1. Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts; or Action and attachment on a claim not due.

2. Is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent; or

3. Is about to remove his property, or a material part thereof, with the intent, or to the effect, of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts, a creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor.

§ 230. The attachment authorized by the last section, may be granted by the court in which the action is brought, or by a judge thereof, or by the probate or county judge of the county; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent, or attorney, shall make an oath in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment, enumerated in the preceding section. How the same to be granted.

§ 231. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions, application for an attachment must be made. Action to be dismissed if attachment refused.

§ 232. The order of the court or judge granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

§ 233. The order of attachment, as granted by the court or judge, shall not be issued by the clerk, until there has been executed in his office, such undertaking on the part of the plaintiff, as is directed by section one hundred and ninety-two. Bond to be executed before order issues.

§ 234. The plaintiff in such action shall not have judgment on his claim, before it becomes due, and the proceedings on attachment may be conducted without delay. Action to be continued until claim is due,

How proceedings
under this arti-
cle regulated.

§ 235. The proceedings in the first article of this chapter subsequent to section one hundred and ninety-two, shall, so far as they are applicable, regulate the attachments authorized by this article.

CHAPTER IV.

INJUNCTION.

Injunction what.

SEC. 236. The injunction provided by this code is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed, it shall be by order. The writ of injunction is abolished.

Causes for an
injunction.

§ 237. When it appears by the petition, that the plaintiff is entitled to the relief demanded; and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

When and by
whom an in-
junction may
be granted.

§ 238. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, by the supreme court or any judge thereof, the district court or any judge thereof, or in the absence from the county, of said judges, by the county judge thereof, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

Court or judge
may direct no-
tice to be given
before granting
an injunction.

§ 239. If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the meantime, restrain such party.

Notice, when
required.

§ 240. An injunction shall not be granted against a party who has answered, unless upon notice; but such party may be restrained, until the decision of the application for an injunction.

Bond required.

§ 241. No injunction, unless provided by special statute, shall operate, until the party obtaining the same shall give an undertaking executed by one or more sufficient sureties, to be approved by the clerk of the court granting such in-

junction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

§ 242. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of the application for an injunction, shall be notice of its allowance.

To whom order addressed, and as to service thereof.

§ 243. Where the injunction is allowed during the litigation and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

As to service of injunction.

§ 244. An injunction binds the party, from the time he has notice thereof, and the undertaking required by the applicant therefor, is executed.

When binding.

§ 245. No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court, and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant, by a court of inferior jurisdiction or any judge thereof.

When not to be granted.

§ 246. An injunction granted by a judge may be enforced, as the act of the court. Disobedience of an injunction may be punished as a contempt, by the court or any judge, who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars for the use of the county, to make immediate restitution to the party injured, and give further security, to obey the injunction; or in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

Disobedience of an injunction may be punished.

§ 247. A party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the territory, or is insufficient, the court may vacate the injunction, unless in a reasonable time sufficient security be given.

Party enjoined may apply for further security.

Affidavits on hearing application.

§ 248. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

Motion to vacate or modify injunction.

§ 249. If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving, or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court.

Affidavits on motion.

§ 250. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same to affidavits or other evidence, in addition to that on which the injunction was granted.

A defendant may obtain an injunction.

§ 251. A defendant may obtain an injunction upon an answer in the nature of a counter-claim. He shall proceed in the manner prescribed in this chapter.

CHAPTER V.

RECEIVERS AND OTHER PROVISIONAL REMEDIES.

Receivers when appointed.

SEC. 252. A receiver may be appointed by the supreme court, or the district court, or by any judge of either; or in the absence of said judges from the county, by the county judge thereof.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund, or the process thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgaged debt.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatis-

fied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.

5. In the cases provided in this code, and by special statutes, when a corporation has been dissolved or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 253. No party, or attorney, or person interested in an action, shall be appointed receiver therein.

No person interested to be received

§ 254. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court or judge, execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Oath and bond by receiver.

§ 255. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers and generally to do such acts respecting the property as the court may authorize.

Powers of receiver.

§ 256. Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order shall be made except upon the consent of all parties to the action.

Investment of funds by receiver.

§ 257. When it is admitted by the pleading or examination of a party, that he has in his possession or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

Disposition of property in hands of trustees.

§ 258. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing disobedience as for a contempt, may make an order, requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court.

Enforcement of orders of court under this chapter.

TITLE IX.

TRIAL.

Chapter 1.—ISSUE.
2.—TRIAL.

CHAPTER I.

ISSUE.

Issues are of
two kinds.

SEC. 259. Issues arise on the pleadings, where a fact, or conclusion of law, is maintained by one party and controverted by the other.

They are of two kinds:

1. Of law.
2. Of fact.

Upon what
issues of fact
arise.

§ 260. An issue of fact arises,

1. Upon a material allegation in the petition denied by the answer.

2. Upon a set-off or counter-claim presented in the answer, and denied by the reply.

3. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II.

TRIAL.

Article 1.—TRIAL IN GENERAL.

2.—TRIAL BY JURY.

3.—TRIAL BY THE COURT.

4.—TRIAL BY REFEREES.

5.—EXCEPTIONS.

6.—NEW TRIAL.

7.—GENERAL PROVISIONS.

8.—TIME OF TRIAL.

ARTICLE I.

TRIAL IN GENERAL.

Trial.

SEC. 261. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

Issues of law to
be tried by the
court.

§ 262. Issues of law must be tried by the court, unless referred as provided in section two hundred and eighty.

Issues of fact by
a jury unless
waived.

Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried

by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

§ 263. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

ARTICLE II.

TRIALS BY JURY.

Subdivision 1.—FORMATION OF THE JURY.

2.—CONDUCT OF THE TRIAL.

3.—VERDICT.

SUBDIVISION 1.

Formation of the Jury.

SEC. 264. The general mode of summoning, impanneling, challenging, and swearing a jury, is not changed by this code.

SUBDIVISION 2.

Conduct of the Trial.

§ 264. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise direct: Mode of conducting trial.

1. The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it.

2. The defendant must then briefly state his defence, and may briefly state the evidence he expects to offer in support of it.

3. The party who would be defeated if no evidence were given on either side, must first procure his evidence; the adverse party will then produce his evidence.

4. The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

5. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it.

6. The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence, shall have the opening and conclusion. If several defendants having separate defences, appear by different counsel, the court shall arrange their relative order.

7. The court may again charge the jury after the argument is concluded.

Jury may view property in litigation or a place where a material fact occurred.

§ 266. Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed, shall speak to them on any subject connected with the trial.

Duty of jury and court after a cause is submitted to them.

§ 267. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

When jury separate, court must admonish them.

§ 268. If the jury are permitted to separate either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express any opinion thereon, until the cause is finally submitted to them.

If jury disagree as to law or fact, they may be brought into court.

§ 269. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in the presence of, or after notice to the parties of their counsel.

Causes for which a jury may be discharged.

§ 270. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

If jury are discharged, cause may be tried again.

§ 271. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

§ 272. When the jury have agreed upon their verdict,

they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

Manner of rendering verdict, jury may be polled.

§ 273. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Verdict must be in writing and signed, by the foreman.

Court may correct error in form of verdict.

SUBDIVISION 3.

Verdict.

§ 274. The verdict of a jury is either general or special. A general verdict is that by which they pronounce, generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court, but to draw from them conclusions of law.

The verdict may either be general or special.

§ 275. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered on the journal.

Jury have discretion to find general or special verdict.

§ 276. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

Special finding prevails over the general.

§ 277. When by the verdict either party is entitled to recover money of the adverse party, the jury in their verdict must assess the amount of recovery.

Jury must assess the amount of recovery.

ARTICLE III.

TRIAL BY THE COURT.

SEC. 278. The trial by jury may be waived by the parties in actions arising on contract, and with the assent of the court, in other actions, in the following manner:

Trial by jury may be waived and cause submitted to the court.

1. By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney.

2. By written consent in person, or by attorney, filed with the clerk.

3. By oral consent in open court entered on the journal.

Court need not state facts specially unless exceptions are filed.

§ 279. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately, from the conclusions of law.

ARTICLE IV.

TRIAL BY REFEREES.

All issues referable by consent.

SEC. 280. All or any of the issues in the action, whether of fact or law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

When parties do not consent, court may order a reference.

§ 281. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in either of the following cases:

1. Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court, that it is necessary that the party on the other side should be examined as a witness to prove the account; in which cases, the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein; or,

2. Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect; or,

3. Where a question of fact, other than upon the pleadings, shall arise upon motion or otherwise, in any stage of an action.

Mode of trial.

§ 282. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue, stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When

Effect of report.

the reference is to report the facts, the report has the effect of a special verdict.

§ 283. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception. Referees, how chosen.

§ 284. A reference as provided in this chapter can not be ordered by a county court, except by consent of parties to the reference and referees. County court can not make reference unless by consent of parties.

§ 285. It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same with their report to the court making the reference. Referee shall sign exceptions.

§ 286. A judge in vacation, upon the written consent of the parties, may make any order of reference, which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court with the other papers in the case. Reference may be made in vacation by consent of parties.

§ 287. The referees must be sworn or affirmed well and faithfully to hear and examine the cause, and to make a just and true report therein according to the best of their understanding. The oath may be administered by any person authorized to take depositions. Oath of referees.

§ 288. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case. Compensation of referees.

ARTICLE V.

EXCEPTIONS.

SEC. 289. An exception is an objection taken to a decision of the court upon a matter of law. Exception.

§ 290. The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the term. An exception must be taken at the time.

§ 291. No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible. No form necessary in stating exceptions.

§ 292. Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts. How exception to be taken when facts appear on the record.

How exceptions
settled where
they do not ap-
pear on record.

§ 293. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present it to the court for its allowance. If true, it shall be the duty of a majority of the judges composing the court, to allow and sign it, whereupon it shall be filed with the pleadings as part of the record, but not spread at large on the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid.

Exception must
be material.

§ 294. No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

Exceptions may
be withdrawn.

§ 295. Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

ARTICLE VI.

NEW TRIAL.

For what causes
a new trial may
be granted.

SEC. 296. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated and a new trial granted, on the application of the party aggrieved for any of the following causes effecting materially the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, referee or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial.

2. Misconduct of the jury or prevailing party.

3. Accident or surprise, which ordinary prudence could not have guarded against.

4. Excessive damages, appearing to have been given under the influence of passion or prejudice.

5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property.

6. That the verdict, report or decision, is not sustained by sufficient evidence, or is contrary to law.

7. Newly discovered evidence material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial.

8. Error of law occurring at the trial, and excepted to by the party making the application.

A new trial may
not be granted,
&c.

§ 297. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the

person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

§ 298. The application for a new trial must be made at the term the verdict, report or decision is rendered, and, except for the cause of newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Application for new trial must be made at the same term judgment is rendered.

§ 299. The application must be by motion upon written grounds, filed at the time of making the motion. The causes enumerated in subdivisions two, three and seven of section two hundred and ninety-six must be sustained by affidavits showing their truth, and may be controverted by affidavits.

Grounds must be in writing and sustained by affidavits.

§ 300. Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases; on which a summons shall issue, be returnable and served, or publication made as prescribed in section seventy-one. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

Application for new trial may be made after the term, but by action.

Proceedings thereon.

ARTICLE VII.

GENERAL PROVISIONS.

SEC. 301. Whenever damages are recoverable the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Plaintiff may recover damages to which he is entitled.

§ 302. The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

ARTICLE VIII.

TIME OF TRIAL.

SEC. 303. The clerk of the district court shall keep at least five books, to be called the appearance docket, the trial docket, the journal, the record, and execution docket.

Books to be kept by the clerk.

§ 304. On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer and

Appearance docket.

his return thereon, the time of filing the petition, and all subsequent pleadings.

Trial docket—
how causes set
for trial.

§ 305. The trial docket shall be made out by the clerk of the court at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up, when either party is in default of a pleading.

Cases not to be
tried before the
day set, except,
&c.

§ 306. The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by consent of the parties, or the order of the court, they are continued or placed at the heel of the docket. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion; and may by rule prescribe the time for hearing motions.

First term, the
appearance term
and second term,
the trial term.

§ 307. In any civil action wherein the defendant shall answer or demur on or before the first day of the term next succeeding the service of process, such first term shall be the appearance term, and such cause shall be continued on the application of either party, to the next term, at which time the same shall be tried, unless for good cause, the court shall continue the same.

When defendant
is in default
judgment may
be had at first
term.

§ 308. In actions wherein default is made, judgment shall be rendered at the first term after the service of process, provided service shall be made not less than ten days before the term.

Trial docket for
use of the bar.

§ 309. The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court.

TITLE X.

EVIDENCE.

Chapter 1.—COMPETENCY OF WITNESSES.

2.—MEANS OF PRODUCING WITNESSES.

3.—MODE OF TAKING THEIR TESTIMONY.

4.—ADMISSION, INSPECTION, AND PRODUCTION OF DOCUMENTS AND GENERAL PROVISIONS.

5.—PERPETRATION OF TESTIMONY.

CHAPTER I.

COMPETENCY OF WITNESSES.

SEC. 310. Every human being of sufficient capacity to Who competent. understand the obligation of an oath, is a competent witness in all cases, both civil and criminal, except as otherwise herein declared. But an Indian, a negro, or mulatto or black person shall not be allowed to give testimony in any cause.

§ 311. Facts which have heretofore caused the exclusion Credibility. of testimony, may still be shown for the purpose of lessening its credibility.

§ 312. A person who has a direct, certain, legal interest Interest. in the suit is not a competent witness unless called on for that purpose by the opposite party, as hereafter provided.

§ 313. The husband can in no case be a witness against the wife, nor the wife against the husband, except in a Husband and wife. criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

§ 314. Neither husband nor wife can be examined in any Same. case as to any communication made by the one to the other while married, nor shall they, after the marriage relation ceases, be permitted to reveal in testimony, any such communication made while the marriage subsisted.

§ 315. No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination, shall be allowed, in giving testimony, to disclose any confidential communication, property intrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline. Communications made in professional confidence not to be disclosed.

§ 316. The prohibitions in the preceding sections do not Unless waived by party, apply to cases where the party in whose favor the respective provisions are enacted waives the rights thereby conferred.

- Public officers.** § 317. A public officer can not be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.
- Civil liability.** § 318. A witness is not excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.
- Criminal liability.** § 319. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.
- Previous convictions.** § 320. A witness may be interrogated as to his previous convictions for a felony. But no other proof of such conviction is competent except the record thereof.
- Whole of a subject may be given.** § 321. When part of an act, declaration, conversation, or writing, is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus, when a letter is read, all other letters on the same subject between the same parties may be given. And when a detached act, declaration, conversation, or writing, is given in evidence, any other act, declaration, or writing, which is necessary to make it fully understood, or to explain the same, may also be given in evidence.
- Writing and printing.** § 322. When an instrument consists partly of written and partly of printed form, the former controls the latter, where the two are inconsistent.
- Understanding of parties to prevail.** § 323. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.
- Historical works &c.** § 324. Historical works, books of science or art, and published maps or charts, when made by persons, indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.
- Subscribing witness.** § 325. When a subscribing witness denies, or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.
- Hand-writing.** § 326. Evidence respecting handwriting may be given by comparisons made by experts or by the jury with writings of the same persons, which are proved to be genuine.
- Entries, &c., of a deceased person, when evidence.** § 327. The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it, or when made in a professional capacity, or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.
- Books of account how proven.** § 328. Books of account, containing charges by one party against the other, made in the ordinary course of busi-

ness, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility.

1. The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book.

2. It must be shown by the party's oath, or otherwise, that they are his books of original entries.

3. It must be shown in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof.

4. The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

§ 329. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof. Private writings may be read in evidence.

§ 330. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge. Judge of the court a competent witness.

§ 331. The usual protest by a notary public, without proof of his signature or notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note. Notarial protest evidence.

CHAPTER II.

MEANS OF PRODUCING WITNESSES.

SEC. 332. The clerks of the several courts and judges of the county courts, shall, on application of any person having a cause or any matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, which may be served by any person not interested in the action or by the sheriff, coroner or constable; but when served by any person other than a public officer, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed except when served by an officer. How the attendance of witnesses is procured.

§ 333. The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause, directing the witness to bring with him, any book, writing The subpoena.

or other thing under his control, which he is bound by law to produce as evidence.

Officer authorized to take deposition may issue subpoena. § 334. When the attendance of the witness before any officer, authorized to take depositions, is required, the subpoena shall be issued by such officer.

How subpoena served. § 335. The subpoena shall be served either by reading or by copy, delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness.

Witness not compelled to attend beyond his county. § 336. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpoena is served upon him.

Witness may demand his fees. § 337. A witness may demand his traveling fees, and fee for one day's attendance, when the subpoena is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return.

Contempt of court by a witness. § 338. Disobedience of a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer, by whom his attendance or testimony is required.

Attachment against a witness. § 339. When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees), the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner, or constable of the county, commanding him to arrest and bring the person therein named, before the court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be endorsed on the back of the attachment, and if no sum is so fixed and endorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

Punishment of a witness for contempt. § 340. The punishment for the contempt mentioned in section three hundred and thirty-eight, shall be as follows: When the witness fails to attend, in obedience to the subpoena (except in case of a demand and failure to pay his fees), the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine the witness in a sum not exceeding fifty nor less than five dollars, or may imprison in the county jail, there to remain until he shall submit to be sworn, testify or give his deposition. The fine imposed by the court shall be paid

into the county treasury, and that imposed by the officer, shall be for the use of the party for whom the witness was subpoenaed. The witness shall also be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, testify or give his deposition.

§ 341. A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of the supreme court, district court, or county court, who shall have power to discharge him if it appear that his imprisonment is illegal. Witness imprisoned may be released by a judge.

§ 342. Every attachment for the arrest or order of commitment to prison of a witness, by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment may be directed to the sheriff, coroner or any constable of the county where such witness resides, or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer. Proceedings on the arrest of a witness.

§ 343. A person confined in any prison in this territory, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition. Person imprisoned may be produced for examination.

§ 344. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition. Must be under control of officer during examination.

§ 345. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning, or attending in obedience to a subpoena. Witness not to be sued out of his county while obeying subpoena.

§ 346. At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena, and if the same be not paid, he shall not be required to remain. Witness may demand fees for each day's attendance.

§ 347. Before testifying, the witness shall be sworn to testify the truth, the whole truth and nothing but the truth. The mode of administering an oath, shall be such as is most binding upon the conscience of the witness. The oath.

CHAPTER III.

MODE OF TAKING THE TESTIMONY OF WITNESSES.

Article 1.—AFFIDAVIT.

2.—DEPOSITION.

The several
modes of taking
testimony.

SEC. 348. The testimony of witnesses is taken in three modes:

1. By affidavit.
2. By deposition.
3. By oral examination.

Affidavit.

§ 349. An affidavit is a written declaration under oath, made without notice to the adverse party.

Deposition.

§ 350. A deposition is a written declaration under oath, made upon notice of the adverse party for the purpose of enabling him to attend and cross-examine; or, upon written interrogatories.

Oral examina-
tion.

§ 351. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

ARTICLE I.

AFFIDAVIT.

For what pur-
pose an affida-
vit may be used.

SEC. 352. An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings or upon a motion, and in any other case permitted by law.

Before whom
an affidavit may
be made.

§ 353. An affidavit may be made in and out of this territory before any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and ten.

ARTICLE II.

DEPOSITIONS.

Subdivision 1.—WHEN TO BE USED.

2.—OFFICERS WHO MAY TAKE THEM.

3.—MANNER OF TAKING AND AUTHENTICATING THEM.

4.—EXCEPTIONS TO DEPOSITIONS.

SUBDIVISION 1.

When to be used.

When deposi-
tion may be
used.

SEC. 354. The deposition of any witness may be used only in the following cases:

1. When the witness does not reside in the county where

the action or proceeding is pending, or is sent for trial, by change of venue; or is absent therefrom.

2. When, from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead.

3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

§ 355. Either party may commence taking testimony by depositions, at any time after service upon the defendant.

SUBDIVISION 2.

Officers who may take them.

§ 356. Depositions may be taken in this territory before a judge or clerk of the supreme court, the district court or county court, before a justice of the peace, notary public, mayor, or chief magistrate of any city, or town corporate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this territory to be used therein, must be taken by an officer or person whose authority is derived within the territory. Officers authorized to take depositions.

§ 357. Depositions may be taken out of the territory by a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city, or town corporate, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from this territory. Same subject.

§ 358. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding. Officer must not be relative or attorney of either party.

§ 359. Any court of record of this territory, or any judge thereof, is authorized to grant a commission to take depositions within or without the territory. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogations, unless the parties otherwise agree. Commission to take depositions.

SUBDIVISION 3.

Manner of taking and authenticating them.

§ 360. Prior to the taking of any deposition, unless taken under a special commission, a written notice specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time by the usual route of travel Requisite of notice to take depositions.

to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

Notice if adverse
party be absent
or non-resident.

§ 361. When the party against whom the deposition is to be read, is absent from, or a non-resident of the territory, and has no agent, or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county; and if not, in some newspaper printed in this territory, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section seventy-two.

By whom to be
written.

§ 362. The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

To be sealed
and forwarded
to the clerk, &c.

§ 363. The deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

Before what tri-
bunals they may
be used.

§ 364. Depositions taken pursuant to this article, shall be admitted in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor, or other judicial officer of a city, or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, endorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor or other judicial officer, arbitrator, or referees.

When they may
be used.

§ 365. When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding upon the same matter between the same parties, subject, however, to all such exceptions as may be taken thereto under the provisions of this title.

Authentication
of same.

§ 366. Depositions taken pursuant to this article, by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenti-

cated, either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same within the meaning of this chapter authorized to take the same. But if the deposition be taken within this territory by an officer having no seal, or within or without this territory under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

§ 367. The officer taking the deposition shall annex there-
to a certificate showing the following facts:

Certificate of the officer must show how and when deposition was taken.

That the witness was first sworn to testify the truth, the whole truth and nothing but the truth.

That the deposition was reduced to writing by some proper person (naming him).

That the deposition was written and subscribed in the presence of the officer certifying thereto.

That the deposition was taken at the time and place specified in the notice.

§ 368. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court, that for any cause specified in section three hundred and fifty-four, the attendance of the witness can not be procured.

§ 369. Every deposition intended to be read in evidence on the trial, must be filed at least one day before the day of trial.

§ 370. The following fees shall be allowed for taking depositions in the territory, viz: Swearing each witness, five cents; for each subpoena, attachment or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents and no more; and such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff or other officer, who shall serve the process aforesaid, and fees of the witnesses, and may also, if directed by the persons entitled thereto, retain such depositions until the said fees are paid.

Fees for taking deposition.

SUBDIVISION 4.

Exceptions to Depositions.

§ 371. Exceptions to depositions shall be in writing, specifying the grounds of objection, and filed with the papers in the cause.

Exceptions must be in writing.

§ 372. No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial.

Must be made before trial.

§ 373. The court shall, on motion of either party, hear

Exceptions to be

considered before trial.

and decide the questions arising on exceptions to depositions, before the commencement of the trial.

§ 374. Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to.

CHAPTER IV.

ADMISSION, INSPECTION AND PRODUCTION OF DOCUMENTS, AND GENERAL PROVISIONS.

A party may be required to admit a paper to be genuine, or pay the expense of proving it.

SEC. 375. Either party may exhibit to the other or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of genuineness. If the adverse party or his attorney fail to give the admission in writing, within four days after the request, and if the party exhibiting the paper or document be afterwards put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear to the satisfaction of the court that there were good reasons for the refusal.

Inspection and copy of books and papers, how obtained.

§ 376. Either party or his attorney, may demand of the adverse party, an inspection and copy, or permission to take a copy of a book, paper or document in his possession or under his control, containing evidence relating to the merits of the action or defense therein. Such demand shall be in writing, specifying the book, paper or document, with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand within four days be refused, the court or judge, on motion and notice to the adverse party, may in their discretion order the adverse party to give the other, within a specified time, an inspection and copy or permission to take a copy of such book, paper or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such, as the party by affidavit alleges it to be.

This section is not to be construed to prevent a party from compelling another to produce any book, paper or document when he is examined as a witness.

How copies of writings obtained.

§ 377. Either party or his attorney, if required, shall deliver to the other party or his attorney, a copy of any deed, instrument or other writing, whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence at the trial, the original,

of which a copy has been refused. This section shall not apply to any paper, a copy of which is filed with a pleading.

§ 378. Printed copies in volumes of statutes, code, or other written law, enacted by any other territory or state, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such territory, state or government, shall be admitted by the courts and officers of this territory on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other territory, state, or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts may also be admitted as presumptive evidence of such law.

Laws of other territories, state and governments how proved.

CHAPTER V.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SEC. 379. The testimony of a witness may be perpetuated in the following manner: Evidence may be perpetuated.

§ 380. The applicant shall file in the office of the clerk of the district court a petition, to be verified, in which shall be set forth, specially, the subject matter, relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give, of such persons, as heirs, devisees, alienees or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this territory, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be the plaintiff. Petition required and its requisites.

§ 381. The court, or judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified. Order for examination.

§ 382. When it appears satisfactorily to the court or judge, that the parties interested, can not be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. When cross interrogatories must be filed.

The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received,

which is not responsive to some one of them. The attorney filing the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

Depositions

where to be filed

§ 383. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed.

To be approved,
and effect of the
same.

§ 384. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party, where the witnesses are dead, or insane, or where their attendance for oral examination can not be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

Applicant to pay
costs.

§ 385. The applicant shall pay the costs of all proceedings under this chapter.

TITLE XI.

JUDGMENT.

Chapter 1.—JUDGMENT IN GENERAL.

2.—JUDGMENT UPON FAILURE TO ANSWER.

3.—JUDGMENT BY CONFESSION.

4.—MANNER OF GIVING AND ENTERING JUDGMENT.

5.—CONVEYANCE BY COMMISSIONERS.

CHAPTER I.

JUDGMENT IN GENERAL.

Judgment.

SEC. 386. A judgment is the final determination of the rights of the parties in an action.

§ 387. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor

of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant, or defendants served.

§ 388. An action may be dismissed without prejudice to a future action. An action may be dismissed without prejudice in certain cases.

1. By the plaintiff before the final submission of the case to the jury, or to the court, where the trial is by the court.

2. By the court, where the plaintiff fails to appear on the trial.

3. By the court for want of necessary parties.

4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

§ 389. In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action, or failed to appear.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SEC. 390. If the taking of an account, or the proof of a fact, or the assessment of damages be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee or master commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial. Damages may be assessed by court or jury on judgment for failure to answer.

CHAPTER III.

JUDGMENT BY CONFESSION.

SEC. 391. Any person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment therefor; whereupon judgment shall be entered accordingly. Defendant may appear and confess judgment.

Cause of action must be stated. § 392. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

Judgment is a release of errors § 393. Such judgment shall authorize same proceedings for its enforcement, as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors.

On confession by attorney his warrant shall be filed. § 394. Every attorney, who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original, or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

§ 395. If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody, be present and sign the warrant of attorney as a witness.

CHAPTER IV.

MANNER OF GIVING AND ENTERING JUDGMENT.

Judgment to be entered in conformity to verdict. SEC. 396. When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

Court must order entry on special verdict, &c. § 397. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

If pleading authorize judgment it shall be given. § 398. Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

May be given for defendant in cases of counter-claim and set-off. § 399. If a counter-claim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

Right of an infant need not be reserved in a judgment. § 400. It shall not be necessary to reserve in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

§ 401. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. Judgments and orders must be entered on the journal.

§ 402. The clerk shall make a complete record of every cause, as soon as it is finally determined; unless such record or some part thereof be duly waived. Complete record to be made.

§ 403. He shall make up such record in each cause, in the vacation next after the term at which the same was determined; and the presiding judge of such court shall, at its next term thereafter, subscribe the same. When to be made up and signed.

§ 404. The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded. Of what the record must consist. Certain papers may be abbreviated.

§ 405. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same. Further time to make record may be granted.

§ 406. No complete record shall be made

1. In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a *nolle prosequi*, on the indictment. Cases in which record need not be made.

2. In cases where an action has been dismissed without prejudice to a future action.

3. In actions in which, in open court, at the term at which the final order or judgment shall be made, both parties shall declare their agreement that no record shall be made.

§ 407. In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid for making the same by the party desiring the record to be made. May be made of an action dismissed without prejudice.

§ 408. A complete record shall be made in the case mentioned in section three hundred and eighty-nine, unless waived by the parties.

CHAPTER V.

CONVEYANCE BY COMMISSIONERS.

Conveyance by
master commis-
sioners.

SEC. 409. Real property may be conveyed by master commissioners as hereinafter provided:

1. When by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment.

2. When specific real property is required to be sold under an order or judgment of the court.

Sheriff may act
as master
commissioner.

§ 410. A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same, shall conform in all respects to the laws regulating sales of land upon execution.

Requisites of a
master's deed.

§ 411. The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged and recorded, as the deed of a sheriff, of real property sold under execution.

TITLE XII.

CAUSES OF ACTION WHICH SURVIVE, AND ABATEMENT OF ACTIONS.

What causes of
action survive.

SEC. 412. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

§ 413. No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office; which shall abate by the death of the defendant.

TITLE XIII.

REVIVOR.

Chapter 1.—REVIVOR OF ACTIONS.

2.—REVIVOR AND NEW PARTIES TO JUDGMENT.

CHAPTER I.

REVIVOR OF ACTIONS.

SEC. 414. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed; the death of the party, or the cessation of his powers, being stated on the record.

Proceedings when one of two or more parties dies, &c.

§ 415. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of a survivorship, and the court is of opinion, that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

Same.

§ 416. When one of the parties to an action dies, or his powers as a personal representative cease before the judgment, if the right of action survive in favor of, or against his representatives or successor, the action may be revived, and proceed in their names.

Same.

§ 417. The revivor shall be, by a conditional order of the court, if made in term, or by a judge thereof, if made in vacation, that the action be revived in the names of the representatives, or successor of the party who died, or whose powers ceased, and proceed in favor of, or against them.

Mode of 'reviving an action.

§ 418. The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased suggesting his death, or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

By whom motion to revive may be made.

§ 419. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time as a summons, upon the party adverse to the one making the motion, and if suf-

If not made by consent, copy of order must be served.

ficient cause be not shown against the revivor, the action shall stand revived.

When such service may be constructive.

§ 420. When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them in whose name the action may be ordered to be revived, are non-residents of the territory, or have left the same to avoid the service of the order, or so concealed themselves that the order can not be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for four consecutive weeks, as provided by section seventy-one, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

When the plaintiff dies, in whose name action to be revived.

§ 421. Upon the death of the plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

When defendant dies, in whose name action to be revived.

§ 422. Upon the death of a defendant in an action, wherein the right or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs or devisees of the defendant, or both, when the right of action or any part thereof survives against them.

When defendant in real action dies, against whom action to be revived.

§ 423. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made, in the manner directed in the preceding sections of this title.

Within what time to be revived against defendant.

§ 424. An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made.

Order to revive action in favor of representative of plaintiff may be made forthwith.

§ 425. An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his powers have ceased in the mean time, the order of revivor on both sides may be made in the period limited in the last action.

If the time has passed for reviewing an ac-

§ 426. When it appears to the court by affidavit, that either party to an action has been dead, or where a party

sues, or is sued as a personal representative, that his powers have ceased for a period so long, that the action can not be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

tion it may be stricken from the docket.

§ 427. At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days notice of the application therefor, may have an order to strike the action from the docket and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Defendant may have case stricken from docket if plaintiff fails to revive.

§ 428. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

Action stands for trial at the term it is revived.

CHAPTER II.

REVIVOR AND NEW PARTIES TO JUDGMENT.

SEC. 429. When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

Joint debtors not originally summoned may be made parties to the judgment.

§ 430. If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real or personal, or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal, or both, of such deceased party.

If either party die after judgment, revivor may be against their representatives.

§ 431. If a judgment become dormant, it may be revived in the same manner as is prescribed for reviving actions before judgment.

Dormant judgment.

TITLE XIV.

EXECUTIONS.

- Chap. 1. EXECUTIONS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.
 2. PROCEEDINGS IN AID OF EXECUTION.
 3. EXECUTIONS AGAINST THE PERSON.
 4. EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.
 5. JUDGMENT BEFORE JUSTICES OF THE PEACE.

Execution, how
issued.

SEC. 432. Executions shall be deemed process of the court, and shall be issued by the clerk and directed to the sheriff of the county. They may be directed to different counties at the same time.

Different kinds
of execution.

§ 433. Executions are of three kinds:

1. Against the property of the judgment debtor.
2. Against his person.
3. For the delivery of the possession of real property, with damages for withholding the same and costs.

CHAPTER I.

EXECUTIONS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

Property sub-
ject to levy
and sale.

SEC. 434. Lands, tenements, goods and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution and sold as hereinafter provided.

When lien of
judgment at-
taches to lands
or goods.

§ 435. The lands and tenements of the debtor within the county where the judgment is entered, shall be bound for the satisfaction thereof, from the first day of the term at which judgment is rendered; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

When judgment
becomes dor-
mant and ceases
to be a lien.

§ 436. If execution shall not be sued out within five years from the date of any judgment, that now is or may hereafter be rendered in any court of record in this territory; or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

The execution,
its command
and endorse-
ment.

§ 437. The writ of execution against the property of the judgment debtor, issuing from any court of record in this territory, shall command the officer to whom it is directed, that of the goods and chattels of the debtor, he cause to be

made the money specified in the writ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

§ 438. When two or more writs of execution against the same debtor shall be sued out during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to indorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to affect any preferable lien, which one or more of the judgments, on which execution issued, may have on the lands of the judgment debtor.

Preference to executions.

First delivered first satisfied

Preferable liens saved.

§ 439. The officer to whom a writ of execution is delivered shall proceed, immediately, to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment.

Goods and chattels to be first taken on execution and for want thereof—lands and tenements,

§ 440. If the officer, by virtue of any writ of execution, issued from any court of record in this territory, shall levy the same on any goods and chattels claimed by any person other than the defendant, it shall be the duty of said officer forthwith to give notice in writing to some justice of the peace in the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace, immediately upon the receipt of such notice and schedule, to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested men, having the qualifications of electors, who shall be named in said summons, to appear before him, the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to try and determine the right of the claimant to the property in controversy. And it shall be the duty of the claimant to give two days' notice, in writing, to the

What proceedings when goods and chattels levied on are claimed by any other person than the defendant.

plaintiff or other party for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that the same could not be given by reason of the absence of the party, his agent or attorney.

Same subject.

§ 441. The jury summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to the evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding of the jury, for the claimant, that he recover his costs against the plaintiff in execution, or other party to the same, for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant according to the finding of said jury, then the said justice shall render judgment on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Said justice of the peace, in the taxation of costs accruing by reason of such claim and trial shall allow each juror summoned and sworn, the sum of fifty cents; and for the sheriff, constable, or other officer, and witnesses, and for himself, he shall tax such fees as are allowed by law, to each, respectively, for like services rendered in other cases. Such judgment for the claimant, (unless an undertaking shall be executed, as provided in the next section) shall be a justification of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels, as were found to belong to such claimant.

If jury find for the claimant, plaintiff may tender bond and have the property sold on execution.

§ 442. If the jury shall find the property or any part thereof to be in the claimant, and the plaintiff in execution, shall, at any time within three days after such trial, tender to the sheriff or other officer having such property in his custody on execution, an undertaking with good and sufficient sureties, payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to claimant, and proceed to sell such property, as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

§ 443. In all cases where a sheriff, coroner, or other officer, shall by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may for his own security, take of the defendant an undertaking with security in such sum as he may deem sufficient, to the effect, that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale.

When goods levied on remain unsold, officer may take bond for their delivery.

Condition of the bond.

If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases.

What a breach of its condition.

§ 444. The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement published in some newspaper printed in the county, or in case no newspaper be printed therein, by setting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where the sale is to be held. And where goods and chattels levied upon, can not be sold for want of bidders, the officer making such return, shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

What notice shall be given previous to the sale of goods on execution.

Proceedings when goods remain unsold.

§ 445. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ, shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that, if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit being the property of the judgment debtor, sufficient to satisfy the debt.

Further levy and sale, if first be insufficient.

Lands to be appraised before sale.

§ 446. If execution be levied on lands and tenements, the officer levying such execution shall call an inquest of three disinterested freeholders, who shall be resident within the county where the lands taken in execution are situate, and administer to them an oath, impartially to appraise the property so levied upon, upon actual view; and such freeholders shall forthwith return to the said officer, under their hands, an estimate of the real value in money, of said property.

Copy of appraisal to be deposited with clerk.

§ 447. The officer receiving such return, shall forthwith deposit a copy thereof with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this title.

Lien of judgment restricted by two-thirds of appraised value of lands.

§ 448. If, upon such return as aforesaid, it appear by the inquisition, that two-thirds of the appraised value of said lands and tenements so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execution issued, shall not operate as a lien, on the residue of the debtor's estate to the prejudice of any other judgment creditor. But no tract of land shall be sold for less than two-thirds of the value returned in the inquest:

Lands not to be sold for less than two-thirds appraised value, except for debts due for taxes, &c.

Shall not apply to contracts made before this act takes effect.

Provided that nothing contained in this and the proceeding sections, shall apply to executions issued upon judgment rendered upon any cause of action which arose before the taking effect of this act; and nothing in this section contained shall in anywise extend to affect the sale of lands by the territory, but all lands therein the property of individuals, indebted to the territory for any debt or taxes, or in any other manner, shall be sold without valuation, for the discharge of such debt or taxes, agreeably to the laws for such case made and provided.

Property of delinquent officers to be sold without valuation.

§ 449. If the property of any clerk, sheriff, coroner, justice of the peace, constable or any collector of territorial, county, town or township tax, shall be levied on, for, or on account of any moneys that now are, or may hereafter be by them collected, or received in their official capacity, the property so levied on, shall be sold without valuation.

What notice of sale to be given and how.

§ 450. Lands and tenements, taken in execution, shall not be sold, until the officer cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement in some newspaper, printed in the county; or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement upon the court house door, and in five other public places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement, shall be set aside, on motion, by the court to which the execution is returnable.

Proceedings of

§ 451. If the court, upon the return of any writ of execu-

tion, for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such land and tenements; and the officer, on making such sale, may retain the purchase money in his hands, until the court shall have examined his proceedings, as aforesaid, when he shall pay the same to the person entitled thereto, agreeably to the order of the court.

officer to be examined by the court; confirmation and order for deed.

§ 452. The sheriff, or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold, as the person, or persons against whom such writ or writs of execution were issued, could have made of the same, at, or any time after they became liable to the judgment.

Sheriff to make deed for land sold on execution,

The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at or after the time, when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff, or other officer shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

The estate conveyed and effect of deed.

How executed.

§ 453. The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent, or attorney, shall advance to such officer, so much money as will be sufficient to discharge the fees of the printer, for publishing such notice.

Officer may refuse to publish notice of sale unless printers' fees advanced.

§ 454. Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney (provided either of them reside in the county) the fees in said section specified.

Must demand his fees before refusal,

§ 455. All sales of lands or tenements under execution, shall be held at the court house if there be one in the county in which such lands and tenements are situated, and if there

Sales of lands to be at court house if there be one.

Sheriff and appraisers shall not purchase.

be no court house, then at the door of the house in which the district court was last held. No sheriff, or other officer, making the sale of property, either personal, or real, nor any appraiser of such property, shall either directly or indirectly purchase the same; and every purchase so made, shall be considered fraudulent and void.

§ 456. If lands and tenements levied on as aforesaid, are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

When creditors direct separate levies to be made, how to proceed.

§ 457. In all cases, when two or more executions shall be put into the hands of any sheriff, or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution, or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor, or debtors; giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter, be entitled to a preference, the choice of such part of the real property of the judgment debtor, or debtors, as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor, or debtors, when, in the opinion of the appraisers, the same may be divided without material injury; and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, or such part of the same shall be levied on to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due on the execution, bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

Successor of sheriff may make deeds for land sold by predecessor.

§ 458. If the term of service of the sheriff, or other officer, who has made, or shall hereafter make sale of any lands and tenements, shall expire; or if the sheriff or other officer shall be absent, or be rendered unable by death, or otherwise, to make a deed of conveyance of the same, any succeeding sheriff, or other officer, on receiving a certificate from the court from which the execution issued for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court, that such sale was fairly and legally made; and, on tender of the purchase money, or if the same, or any part thereof be paid, then, on proof of such payment

and tender of the balance, if any, may execute to the said purchaser, or purchasers, or his or their legal representatives, a deed of conveyance of said lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff, or other officer, who made sale, had executed the same.

§ 459. If on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer, more money than is sufficient to satisfy the writ or writs of execution, with interests and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution or his legal representatives.

Balance after satisfaction of execution to be paid to defendant.

§ 460. If any judgment or judgments, in satisfaction of which any lands or tenements, are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers; but in such case, restitution shall be made by the judgment creditor of the moneys, for which such lands or tenements were sold, with lawful interest from the day of sale.

Reversal of judgment not to affect the title of purchaser.

§ 461. No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied, before the expiration of one year next after its rendition, shall operate as a lien on the estate of any debtor, to the prejudice of any other bona fide judgment creditor. But in all cases, where judgment has been or may be rendered in the supreme court, and a special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the term of the district court to which such mandate may be directed. Nothing in this subject contained, shall be construed to defeat the lien of a judgment creditor, who shall fail to take out execution and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed. In all cases, where real estate has been or may hereafter be taken on execution and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisal, and order a new one to be made, or to set aside such levy and appraisal, and award a new execution to issue, as the case may require.

Judgment loses its lien if execution, be not levied in one year.

New appraisal when allowed.

§ 462. The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

When execution returnable.

Judgments
against principal
and surety how
entered.

Execution in
such case.

Appraisers' fees,
&c.

For what causes
sheriff or other
officer may be
amerced.

§ 463. In all cases where judgment is rendered in any court of record within this territory, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid, shall issue execution on such judgment, commanding the sheriff or other officer, to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor, to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

§ 464. Each freeholder, summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services the sum of fifty cents, for each day he may be so engaged as such appraiser, to be collected on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement. And when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the precinct in which such freeholder resides, forfeit and pay the sum of fifty cents, for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the county treasury for the use of the county.

§ 465. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest, and return a copy thereof forthwith to the clerk's office; or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return, that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect on demand to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the

same, except as provided in section four hundred and fifty-one; or shall neglect or refuse, on demand made by the defendant, his agent or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution; with interest and legal costs, such sheriff or other officer, shall, on motion in court and two days' notice thereof in writing, be amerced in the amount of said debt, damages and costs, with ten per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

§ 466. If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties, shall be the same as provided for in the foregoing section against sheriffs and their sureties.

Clerks of the courts may be amerced.

§ 467. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per centum thereon.

The amount of amercement.

§ 468. When execution shall be issued in any county in this territory, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the office where it was issued, within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

Execution issued out of the county may be returned by mail.

§ 469. No sheriff shall forward by mail, any money made on any such execution, unless he shall be specially instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail, at least sixty days prior to the first day of the term at which such motion shall be made. All amercements, so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

Sheriff not to send money by mail.

Notice to amerce sheriff of another county.

Amercement same as a judgment.

§ 470. Each and every surety of any sheriff or other officer, may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the

Sureties may be made parties to such judgments.

goods and chattels, lands and tenements of any such surety, shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer, against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment at his election.

Officer amerced
may have execu-
tion on plaint-
iff's judgment.

§ 471. In cases where a sheriff, or other officer, may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

CHAPTER II.

PROCEEDINGS IN AID OF EXECUTION.

§ 472. When a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any interest which he may have in any banking, turnpike, bridge or other joint stock company, or any interest he may have in any money contracts, claims or choses in action due or to become due to him, or in any judgment or decree; or any money, goods or effects which he may have in possession of any person, body politic or corporate, shall be subject to the payment of such judgment by proceedings in equity, or as in this chapter prescribed.

When execution
is returned un-
satisfied order
for discovery of
property allow-
ed.

§ 473. When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where he resides, or if he do not reside in the territory, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a county judge or a judge of the district court of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or a referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

Same.

§ 474. After the issuing of an execution against property, and upon proof by affidavit of the judgment creditor or otherwise, to the satisfaction of the district court, or a judge thereof, or a county judge of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require

the judgment debtor to appear at a time and place in said county to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

§ 475. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party, or otherwise, that there is danger of the debtor leaving the territory or concealing himself to avoid the examination herein mentioned, issue a warrant requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a county judge, or a judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the territory, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking in such sum as the judge may prescribe, with one or more sureties that he will from time to time attend for examination before the judge or referee as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

Warrant may
issue for arrest
of the debtor.

His examination

Understanding
by debtor.

§ 476. No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

The existence of
fraud will not
excuse from ex-
amination.

§ 477. After the issuing of execution against property, any person indebted to the judgment debtor, may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution.

Any debtor may
pay execution
against his
creditor.

§ 478. After the issuing, or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person, or corporation, has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, or corporation, or any officer or member thereof, to appear, at a specified time and place, within the county in which such person or corporation may be served with the order to answer, and answer concerning the same.

Examination of
debtors of judg-
ment debtor or
those having
property belong-
ing to him.

The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

Proceedings in
such case.

§ 479. Witnesses may be required upon the order of the judge, or by a subpoena issued by the clerk of the district court, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

Same.

§ 480. The party or witness may be required to attend before the judge, or before a referee, appointed by the court or judge. If before a referee, the examination must be taken by the referee and certified by the judge. All examinations and answers before a judge or referee, under this chapter, must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

Same.

§ 481. The judge may order any property of the judgment debtor, not exempt by law, in the hands of either himself or any other person, or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, can not be so applied, where it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Same.

§ 482. The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

Undertaking by
receiver.

§ 483. If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such receiver; if any other person shall be appointed receiver, he shall give a written undertaking, in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge his duties of receiver, and he shall also take an oath to the same effect, before acting as such receiver. The undertaking mentioned in this section shall be to the Territory of Nebraska, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

Proceedings
may be continu-
ed.

§ 484. The judge, or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time, until they are completed.

§ 485. The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence of the facts. Reference by judge.

§ 486. If any person, party or witness, disobey an order of the judge or referee, duly served, such person, party or witness may be punished by the judge as for contempt. Disobedience of order how punished.

§ 487. The orders to judgment debtors and witnesses, provided for in this chapter, shall be in writing and signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same. Proceedings to be reduced to writing and filed with the clerk.

§ 488. The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same. Compensation and costs.

§ 489. The county judge shall be allowed for his services, under this chapter, the sum of three dollars in each case, and such fees as are allowed by law to clerks of the district court for similar services. Compensation of judge.

CHAPTER III.

EXECUTIONS AGAINST THE PERSON.

SEC. 490. An execution against the person of the judgment debtor, shall require the officer to arrest such debtor and commit him to the jail of the county, until he pay the judgment or be discharged according to law. Its command &c.

§ 491. An execution against the person of the debtor may be issued upon any judgment for the payment of money. For what cause issued.

1. When the judgment debtor has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment.

2. When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals with the like intent.

3. When he has assigned or disposed of all or any part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution.

4. When he fraudently contracted the debt or incurred the obligation upon which the judgment was rendered.

5. When he was arrested on an order before judgment and has not been discharged as an insolvent debtor, or the order has not been set aside, as improperly made.

By whom and how allowed.

§ 492. An execution against the person of the debtor can be issued only when the same is allowed by the supreme court, the district court, or county court, or any judge of either, upon being satisfied by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented of the existence of one or more of the particulars mentioned in the last preceding section.

May be issued by a justice of the peace.

§ 493. A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by the like affidavit and evidence.

When issued of course.

§ 494. In all cases in which the judgment debtor was arrested before judgment, and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

Discharge from arrest by delivery of property.

§ 495. Any person taken in execution as aforesaid, shall be discharged by delivering or setting off to the officer serving the same, if issued from a court of record, real or personal property, if issued from a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ issued.

Death of debtor no satisfaction of judgment.

§ 496. The death of a person under arrest in an action does not satisfy the judgment; but an execution may issue thereon, as if the arrest had been made.

If arrested before judgment, must be charged in execution within ten days after judgment.

§ 497. If a person imprisoned under an order of arrest made before judgment, is not charged in execution within ten days after judgment, he shall be discharged from such imprisonment.

Discharged if unable to perform the act or endure imprisonment.

§ 498. In cases of commitment under this chapter, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his inability to perform the act or endure the imprisonment, may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof in which the judgment was or might be rendered on such terms as may be just.

CHAPTER IV.

EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

Its command, &c.

SEC. 499. If the execution be for the delivery of the possession of real property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to

satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for want of such goods and chattels, then out of the lands and tenements, and in this respect it shall be deemed an execution against the property.

§ 500. When the judgment is not for the recovery of money or real property, the same may be enforced by attachment by the court rendering the judgment, upon motion made, or by a rule of the court upon the defendant; but in either case notice of the motion, or a service of a copy of the rule, shall be made on the defendant a reasonable time before the order of attachment is made.

CHAPTER V.

JUDGMENT BEFORE JUSTICES OF THE PEACE.

SEC. 501. In all cases in which judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a transcript of such judgment in the office of the clerk of the district court of the county in which the judgment was rendered, and thereupon the clerk shall, on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment and the time of filing the transcript.

§ 502. Such judgment if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor from the first day of the term; if filed in vacation, as against the judgment debtor, said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors—at the next succeeding term, and other transcripts filed in vacation, said judgment shall have a lien from the first day of the next term of the court in the same manner and to the same extent as if the judgment had been rendered in the district court.

§ 503. Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same, as other executions; and in case of sale of real estate, his proceedings shall be examined, and approved by the court, as in other cases.

§ 504. The justice of the peace shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same, and the entry of the case on the execution docket, shall be paid by the party filing the same, and not be taxed to the other party.

TITLE XV.

MISCELLANEOUS PROCEEDINGS.

- Chapter 1.—OFFER TO COMPROMISE.
 2.—SUBMITTING A CONTROVERSY.
 3.—OFFER TO CONFESS JUDGMENT.
 4.—MOTIONS AND ORDERS.

CHAPTER I.

OFFER TO COMPROMISE.

Effect of, if made
before trial.

SEC. 505. The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff, or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit; and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendants costs from the time of the offer.

The offer no
cause for con-
tinuance.

§ 506. The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of a trial.

CHAPTER II.

SUBMITTING A CONTROVERSY.

Parties may
submit a contro-
versy to the
court without
action.

SEC. 507. Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction, if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon hear and determine the case and render judgment, as if an action were pending.

§ 508. The case, the submission and the judgment shall constitute the record. Record.

§ 509. The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission. The judgment and reversal.

CHAPTER III.

OFFER TO CONFESS JUDGMENT.

SEC. 510. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial. Effect if made after action brought.

§ 511. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence. Before action brought defendant may offer to confess judgment.

CHAPTER IV.

MOTIONS AND ORDERS.

- A motion.** SEC. 512. A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.
- May include several objects.** § 513. Several objects may be included in the same motion if they all grow out of, or are connected with the action or proceeding in which it is made.
- Notice of a motion.** § 514. Where notice of a motion is required it must be in writing, and shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing.
- How motion served.** § 515. Notices of motions mentioned in this chapter may be served by a sheriff, coroner or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.
- Same.** § 516. The service of a notice shall be made, as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees.
- Same.** § 517. Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct.
- An order.** § 518. Every direction of a court or judge made or entered in writing and not included in a judgment, is an order.
- To be entered on journal,** § 519. Orders made out of court, shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XVI.

ERROR IN CIVIL CASES.

- What judgment or order may be reversed &c., in district court.** SEC. 520. A judgment rendered, or final order made, by a county court, justice of the peace or any other tribunal, board or officer, exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.

§ 521. An order affecting a substantial right in an action, ^{What is a final order.} when such order in effect determines the action and prevented a judgment; and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified or reversed as provided in this title.

§ 522. A judgment rendered or final order made by the ^{Reversal by supreme court.} district court, may be reversed, vacated or modified by the supreme court, for errors appearing on the record.

§ 523. A judgment rendered or final order made by any ^{Same.} court, board or tribunal, mentioned in the preceding sections, may be reversed, vacated or modified by the supreme court, for errors appearing on the record; but the petition ^{Petition in error or lease.} in error, in such case, can be filed only by leave of the supreme court, or a judge thereof.

§ 524. The proceedings to obtain such reversal, vacation or modification, shall be by petition, to be entitled, "petition in error," filed in a court having power to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party, that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at the term. ^{Proceedings to obtain reversal or modification.}

§ 525. The summons mentioned in the last section, shall, ^{Same.} upon the written precept of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

§ 526. The plaintiff in error shall file with his petition, a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified.

§ 527. Judges of county courts, justices of the peace, and other judicial tribunals having no clerk, and the clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order ^{By whom and when transcript to be furnished.}

of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

When proceedings in error shall stay execution.

§ 528. No proceeding to reverse, vacate or modify any judgment or final order rendered in the county court, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of said judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows:

Plaintiff's undertaking in such cases.

1. When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs, in case the judgment or final order shall be affirmed in whole or in part.

2. When it directs the execution of a conveyance, or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this territory or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs.

3. When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this territory, or any judge thereof, to the effect, that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs.

4. When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed.

Substitute for such undertaking.

§ 529. Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which the judgment was rendered or order made, to abide the judgment of appellate court.

Undertaking to be approved.

§ 530. Before the written undertaking herein mentioned in section five hundred and twenty-eight, shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties, must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall

indorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

§ 531. In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned to stay proceedings, if the defendant in error give adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

Execution on judgment by giving security to make restitution, &c.

§ 532. No proceeding for reversing, vacating or modifying judgments or final orders, shall be commenced unless within three years after the rendition of the judgment, or making the final order complained of; or, in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years as aforesaid, exclusive of the time of such disability.

When proceedings in error must be commenced.

§ 533. No proceeding to reverse, vacate or modify any judgment rendered, or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued, or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside, or reversed, or upon and after the affirmance thereof in the district court. The person entitled to such proceeding shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the said judgment has been paid off or satisfied prior to the commencement of such proceeding.

Stay of execution on judgment of justice of the peace.

§ 534. When a judgment or final order shall be reversed, either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment, or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment, as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and such court to

Proceedings on reversal or modification of judgment or order.

Mandate.

which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment, or final order, had been rendered therein. And on motion, and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court.

Costs in error.

§ 535. When a judgment, or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

Penalty against plaintiff on affirmance of judgment.

§ 536. When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes, that there was reasonable ground for the proceedings in error.

Misprision of the clerk not ground of reversal.

§ 537. A mistake, neglect or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court, in which the mistake, neglect or omission occurred.

Rendering judgment prematurely a clerical error.

§ 538. Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical error.

Writs of error abolished.

§ 539. Writs of error and certiorari to reverse, vacate or modify judgments, or final orders, in civil cases are abolished, but courts shall have the same power to compel, complete and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and certiorari.

Proceeding when judgment of justice is affirmed.

§ 540. If the judgment of a justice of the peace, taken on error as herein provided to the district court be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the district court.

Proceedings when judgment of justice is reversed.

§ 541. When the proceedings of a justice of the peace are taken on error, to the district court, in manner aforesaid, and the judgment of such justice shall be reversed, or set aside, the court shall render judgment of reversal and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the

cause shall be retained by the court for trial and final judgment, as in cases of appeal.

PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS
AND ORDERS IN THE COURTS IN WHICH THEY ARE REND-
DERED.

§ 542. A district court, shall have power to vacate, or modify its own judgments, or orders, after the term at which such judgment, or order, was made: . . .

District court may vacate or modify judgment after the expiration of term.

1. By granting a new trial for the cause, within the time, and in the manner prescribed in section three hundred.

2. By a new trial granted in proceedings against defendants constructively summoned, as provided in section sixty-nine.

3. For mistake, neglect or omission, of the clerk, or irregularity in obtaining a judgment or order.

4. For fraud practiced by the successful party in obtaining the judgment in order.

5. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings.

6. For the death of one of the parties before the judgment in the action.

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending.

8. For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred.

9. For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

§ 543. The proceedings to vacate, or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of the last preceding section shall be by petition verified by affidavit, setting forth the judgment, or order, the grounds to vacate, or modify it, and the defence to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action: *Provided*, Such summons shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party or his attorney, unless the court or a judge thereof, shall indorse upon the petition permission to issue such summons.

Mode of proceeding.

§ 544. The proceedings to correct mistakes or omissions same.

of the clerk, or irregularity in obtaining a judgment, or order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

Same.

§ 545. The court may first try and decide upon the grounds to vacate, or modify a judgment, or order; before trying, or deciding upon the validity of the defense or cause of action.

Same.

§ 546. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it, shall be preserved to the modified judgment.

Effect on liens,
&c.

Injunction in
such case.

§ 547. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

Same.

§ 548. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defense to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendants the same rights of delay he would have had if the judgment had been rendered at the proper time.

Within what
period the pro-
ceedings under
sec. 542 may be
commenced.

§ 549. Proceedings to vacate, or modify a judgment, or order, for the causes mentioned in subdivisions four, five and seven of section five hundred and forty-two, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three, and six, of the same section, shall be within three years, and in subdivision nine within one year after the defendant has notice of the judgment.

The provisions
of this title ap-
ply to the su-
preme court and
county courts.

§ 550. The provisions of this title subsequent to section five hundred and forty-one shall apply to the supreme court and county court, so far as the same may be applicable to the judgments, or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings, and in estimating time, the county court shall, for this purpose be considered as holding, in each year, three terms of four months each, the first commencing on the first day of January of each year.

§ 551. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

Cases pending in appellate courts, liens, &c.

TITLE XVII.

COSTS.

CHAPTER I.

SEC. 552. In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by indorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court, in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtained judgment, or not.

Non-resident plaintiffs to give security for costs.

§ 553. An action in which security for costs is required by the last section, and has not been given, shall be dismissed on the motion and notice by the defendant, at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

Effect of not giving.

§ 554. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections.

If plaintiff becomes a non-resident after action brought.

§ 555. In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this territory, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by the plaintiff.

When additional security must be given.

§ 556. After final judgment has been rendered in an action, in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs or any

Proceedings against surety for costs.

part thereof, after ten days' notice of such motion, may enter up judgment in the name of the defendant or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

When an informer under a penal statute shall pay costs.

§ 557. If any informer, under a penal statute, to whom the penalty or any part thereof if recovered is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution, unless he be an officer, whose duty it is to commence the same.

Costs on disclaimer.

§ 558. Where defendants disclaim having any title or interest in land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.

Costs on motion and amendments.

§ 559. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid, as the court in its discretion may direct.

When allowed of course to plaintiff.

§ 560. Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

When plaintiff shall not recover

§ 561. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs; and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

When plaintiff shall pay.

§ 562. Costs shall be allowed of course, to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

When under control of the court.

§ 563. In other actions the court may award any tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Who to pay when several actions against parties to the same instrument.

§ 564. Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section thirty-seven, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions, were at the commencement of the previous action, openly within the territory.

§ 565. When a summons is issued to another county than

that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees, as if the summons had issued in the county of which he is sheriff. Fees on summons issued out of the county.

TITLE XVIII.

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES.

Chapter 1.—ACTIONS CONCERNING REAL PROPERTY.

2.—ACTIONS ON OFFICIAL SECURITIES.

3.—ACTIONS FOR THE PARTITION OF REAL PROPERTY.

4.—PROCEEDINGS UPON MANDAMUS.

CHAPTER I.

ACTIONS CONCERNING REAL PROPERTY.

SEC. 566. In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition, that he has a real estate therein and is entitled to the possession thereof describing the same, as required by section one hundred and twenty-five, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived. The petition generally.

§ 567. It shall be sufficient, in such action, if the defendant in his answer deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defence is made. The answer.

§ 568. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right or did some act amounting to such denial. The petition by a tenant in common against a co-tenant.

§ 569. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property. The recovery where right terminates during pendency of the action.

§ 570. In an action for the recovery of real property, the party against whom judgment is rendered, may, at any time during the term, at which the judgment is rendered, demand New trial of course.

another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

No further trial, except, &c. § 571. No further trial can be had in such action, except upon appeal, unless for good cause shown as in other actions.

Occupying claimant's rights. § 572. The parties in an action for the recovery of property, may avail themselves, is entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

Liability of party committing waste. § 573. If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor.

Forfeiture and conviction. § 574. Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages so recovered, is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

§ 575. Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

Liability of trespassers. § 576. For willful trespass, injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this territory for any purpose whatever, the trespasser shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

Exception. § 577. Nothing herein contained authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge, upon the land in its immediate neighborhood.

Owner in remainder may have action, &c. § 578. The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

Action by an heir. § 579. An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestors as well as in his own time, unless barred by the statute of limitations.

By a purchaser on execution. § 580. Where lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase.

Qualification. § 581. This provision is not intended to prevent the person who occupies the lands, in the mean time, from using them in the ordinary course of husbandry, or for using

timber for the purpose of making suitable repairs thereon.

§ 582. But if for this purpose he employ timber vastly superior to that required for this occasion, he will be deemed to have committed waste, and will be liable accordingly.

CHAPTER II.

ACTIONS ON OFFICIAL SECURITIES.

SEC. 583. When an officer, executor or administrator ^{The plaintiff in such actions.} within this territory, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon; in his own name, against the officer, executor or administrator, and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted ^{Copy of bond.} and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

§ 584. A judgment in favor of a party for one delinquency, ^{Further actions.} does not preclude the same or another party from an action on the same security for another delinquency.

CHAPTER III.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SEC. 585. The provisions of the existing statutes relating to the partition of lands, tenements and hereditaments, are not affected by this code, and partition may be made under the same, as heretofore, until the legislature shall otherwise provide. The provisions of such statutes, shall also apply to actions for such partition brought under this act, so far as the same can be so applied to the substance and subject matter of the action without regard to its form. ^{Partition according to existing statutes.}

CHAPTER IV.

PROCEEDINGS UPON MANDAMUS.

SEC. 586. The writ of mandamus may be issued to any inferior tribunal, corporation, board or person, to compel ^{To whom and for what issued.} the performance of an act, which the law specially enjoins as a duty resulting from an office, trust or station. But though it may require an inferior tribunal to exercise its

judgment, or proceed to the discharge of any of its functions, it can not control judicial discretion.

In what cases
not to issue.

§ 587. This writ may not be issued in any case, where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Writ, alterna-
tive or peremp-
tory.

§ 588. The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he, then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

When peremp-
tory.

§ 589. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must be first issued.

Motion therefor.

§ 590. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

How allowed
and served

§ 591. The allowance of the writ must be indorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for a contempt.

The answer.

§ 592. On the return day of the alternative writ, or such further day, as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition in a civil action.

Proceedings, if
no answer.

§ 593. If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing new matter, the same shall not in any respect, conclude the plaintiff, who may on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

No pleadings
but writ and
answer.

§ 594. No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined must be tried,

and the further proceedings thereon had in the same manner, as in a civil action.

§ 595. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court, or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay. Judgment for plaintiff.

§ 596. A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return. Its effect.

§ 597. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court, that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer, or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county, where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined. When a fine may be imposed.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

Chapter 1.—PROCESS.

2.—DUTIES OF CLERKS.

3.—DUTIES OF SHERIFFS.

4.—MISCELLANEOUS PROVISIONS.

5.—PROVISIONS RESPECTING EXISTING ACTIONS.

6.—PROVISIONS AS TO THE OPERATION OF THE CODE.

CHAPTER I.

PROCESS.

SEC. 598. The style of all process shall be "The Territory of Nebraska, ——— county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk and dated the day it issued. Style of all process, &c.

§ 599. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to, and executed by a person appointed by the court or judge. Process when sheriff is a party.

§ 600. The court, or judge, for good cause, may appoint

point a person to make service. a person to serve a particular process or order, who shall have the same power to execute it, which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

CHAPTER II.

DUTIES OF CLERKS.

Clerks to issue all process upon precipe filed. SEC. 601. All writs and orders for provisional remedies, and process of every kind shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk demanding the same; which precipe shall be for the direction of the clerk and not material to the papers in the case after the issuing of such writ or process.

Filing papers. § 602. It is the duty of the clerk of each of the courts, to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

Time of filing papers to be indorsed. § 603. He shall indorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

Entry on docket of parties summoned. § 604. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

To keep records. § 605. He shall keep the records, and books and papers appertaining to the court, and record its proceedings.

Dockets to be prepared by clerks, &c. § 606. The provisions of article 8, of title 9, prescribing the duties of clerks of the district court, shall, as far as they are applicable, apply to the clerks of other courts of record.

Powers and duties generally. § 607. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code by other statutes, and by the common law. In the performance of his duties he shall be under the direction of his court.

CHAPTER III.

DUTIES OF SHERIFFS.

Sheriff to indorse the time of SEC. 608. The sheriff shall indorse upon every summons, order of arrest, or for the delivery of property, or of attach-

ment or injunction, the day and the hour it was received by him. receiving the process.

§ 609. He shall execute every summons, order, or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court, that he was prevented by inevitable accident, from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure. To execute and return process; liability, &c.

§ 610. The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. Powers and duties generally.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

SEC. 611. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy. Duties may be performed by deputies.

§ 612. Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect. When affirmation sufficient.

§ 613. The time within which an act is to be done as herein provided, shall be computed by excluding the first day and including the last; if the last day may be Sunday, it shall be excluded. Time, how computed.

§ 614. Section three hundred and ninety shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same. Right of a party in default to a jury.

§ 615. The ministerial officer, whose duty it is to take security in any undertaking provided for by this code, shall have the right to require the person offered as surety, to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject, for taking insufficient security. Person offered as surety may be required to qualify.

§ 616. The surety in every undertaking provided for by this code, must be a resident of this territory, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this territory equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate have the qualifications prescribed in this section. Qualification of sureties.

§ 617. The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the territory and revise their general rules, and make such Judges of the supreme court to make rules.

amendments thereto as may be necessary to carry into effect the provisions of this code; and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court and the district courts.

CHAPTER V.

PROVISIONS RESPECTING EXISTING ACTIONS.

Application of
the code to suits
pending.

SEC. 618. The provisions of this code do not apply to proceedings in actions, or suits pending when it takes effect. They shall be conducted to final judgment, or decree, in all respects as if it had not been adopted; but the provisions of this code shall apply after a judgment or order heretofore or hereafter rendered to the proceedings to enforce, vacate, modify, or reverse it.

CHAPTER VI.

PROVISIONS AS TO THE OPERATION OF THE CODE.

Rights of action
under existing
laws to be en-
forced under this
code.

SEC. 619. Rights of civil action given, or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in section six hundred and twenty. If a case ever arise, in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, can not be had under this code, the practice heretofore in use, may be adopted, so far as may be necessary to prevent a failure of justice.

This code not to
control special
proceedings.

§ 620. Until the legislature shall otherwise provide, this code shall not affect proceedings on habeas corpus, quo warranto, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of decased persons; nor proceedings under statutes relating to dower, divorce, or alimony; or to establish, or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

When a form of
action and mode
of proceeding
expressly pro-
vided for by
statute, may be
used to a certain
extent.

§ 621. Where, by statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity

thereto. Where the statute designates by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

TITLE XX.

ACTS REPEALED AND OTHER PROVISIONS.

SEC. 622. The following acts and parts of acts, are hereby repealed:

Chapters seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-nine, thirty, thirty-one; the first twenty-seven sections, and all after the fifty-second section of chapter thirty-three; chapters thirty-four and thirty-eight, of the Code of Nebraska, approved February 13, 1857.

Chapter seventeen, of the Code of Nebraska, approved January 25th, 1856, entitled "Mechanics' Liens."

An act entitled "An act for securing liens to mechanics and others," approved March 14, 1855.

Provided, That any and all rights which shall have attached, by virtue of the provisions contained in any of the chapters above repealed, under any cause of action accruing before the taking effect of this act, shall not be affected by said repeal.

And all other acts and parts of acts, inconsistent with this act, are hereby repealed.

§ 623. This act shall take effect and be in force, from and after the 1st day of April, 1859.

Approved November 1, 1858.

AN ACT

Supplemental to An Act entitled "An Act to Establish
a Code of Civil Procedure."

Approved November 1, 1858.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska:* That the 22d section of the act establishing a code of civil procedure, passed at the present session of the legislative assembly, be so amended as to read as follows:

§ 622. This act shall take effect and be in force, from and after the 1st day of February, A. D. 1859.

§ 2. That section 622 of the act to which this is supplementary, be, and the same is, hereby repealed.

Approved November 4, 1858.

PART SECOND.

GENERAL LAWS.

AN ACT

Providing for the Appointment of Deputies.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the territorial auditor, treasurer and librarian, respectively and each county register of deeds, treasurer, sheriff, clerk and surveyor, may appoint a deputy, for whose acts he shall be responsible, and from whom he shall require a bond; which appointment shall be in writing, and shall be revocable by writing, under the principal's hand; and both the appointment and revocation shall be filed and kept in the office of the county clerk, in case of deputies for county officers, but in case of territorial officers, they shall be filed and kept by the principals.

§ 2. In the absence or disability of the principal, the deputy shall perform the duties of his principal pertaining to his own office, but when an officer is required to act in conjunction with or in place of another officer, his deputy can not supply his place.

§ 3. The territorial auditor, treasurer and librarian can neither of them appoint the other his deputy, nor can either the register of deeds, treasurer, sheriff, clerk or surveyor of a county appoint either of the others.

§ 4. The sheriff may appoint such number of deputies as he sees fit.

§ 5. Each deputy shall take the same oath as his principal, which shall be indorsed upon and filed with the certificate of his appointment.

§ 6. When a county officer, receiving a salary and no fees, is compelled by the pressure of the business of his office to employ a deputy the county commissioners may make a reasonable allowance to such deputy.

§ 7. This act to take effect and be in force from and after its passage.

Approved October 8th, 1858.

AN ACT

To Amend Chapter 2d of the Laws of 1857, relative to District Courts.

SEC. 1. *Be it enacted by the Council and House of Representative of the Territory of Nebraska,* That in all suits in law and in chancery, in the district courts of the territory, where the return day of the process is after the passage of this act, the first term shall be the appearance term, and the second term shall be the trial term, at which second term, and not before, all said cases are to be tried, unless the parties by stipulation shall otherwise agree, and the issue therein shall be made up, and the trial had under such general rules as the supreme court shall prescribe.

§ 2. The above provision shall not apply to those cases in which the defendants shall fail to appear in the cause and answer, as required by section 5 of chapter 13 of the civil code, as approved February 13th, 1857.

§ 3. That all laws authorizing the foreclosure of mortgages, by advertisement, without judicial proceedings, be, and the same are hereby repealed; but such foreclosure shall be effected by the usual course of proceedings in equity in this territory, *provided*, that this repeal shall not impair any rights which have accrued under or in virtue of proceedings already had or commenced under laws authorizing foreclosure by advertisement, but when so commenced and not now terminated, the same may be terminated with like effect as though this act had not been passed.

§ 4. In case of a sale of mortgaged premises, under a decree for foreclosure, the mortgagor or his heirs or assigns, may redeem the premises mortgaged, by paying to the purchaser, or to his heirs or assigns, the amount paid with interest and costs, at any time within one year from the time of sale under any final decree, and creditors of the mortgagor will be entitled to all the rights of redemption, as provided for by section number forty-three, chapter sixteen, third session laws; and in the mean time the mortgagor shall be entitled to the possession of the property.

§ 5. This act shall take effect from and after its passage.

Approved October 14, 1858.

AN ACT

To Abolish the Office of Attorney General.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all powers and duties of, belonging to, assumed or claimed by the Attorney General of this territory, are hereby transferred and made to be the powers and duties of the district attorneys of the judicial districts in this territory respectively.

§ 2. The office of attorney general is hereby abolished.

§ 3. This act shall take effect, and be in force from and after its passage.

Approved October 12, 1858.

AN ACT

To Establish a Territorial Board of Agriculture.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That whenever twenty or more persons, residents of any county of this territory, shall organize themselves into a society for the improvement of agriculture within said county, and shall have adopted a constitution and by-laws agreeable to the rules and regulations to be furnished by the Nebraska Territorial Board of Agriculture hereafter created, and shall have appointed the usual and proper officers; and when the said society shall have raised and paid to the treasurer, by voluntary subscription, or by fees imposed upon its members any sum of money in each year not less than fifty dollars and whenever the president of said society shall certify to the county clerk the amount thus paid, attested by the oath of the treasurer before a magistrate, it shall be the duty of said county clerk to draw an order on the treasurer of the county in favor of the president and treasurer of said society for a sum equal to the amount thus raised. Provided it does not exceed half a cent to each inhabitant of said county, upon a basis of the last vote cast for delegate to congress allowing five inhabitants for each vote then cast, but not to exceed in any county the sum of two hundred dollars, and it shall be the duty of the treasurer of said county to pay the same.

§ 2. That it shall be the duty of the several county societies which may be formed under the provisions of the preceding section during the continuance of this act, annually to offer and award premiums for the improvement of soil, crops, tillages, manures, implements, stocks, articles of domestic industry, and such other articles, productions and improvements as they may deem proper, and to perform all such acts as they may deem best calculated to promote the agriculture and manufacturing interest of the county and of the territory. And it shall also be their duty so to regulate the amount of premiums and the different grade of the same as to enable farmers of small as well as large means to compete therefor, and in making their awards special reference shall be had to the profits which may accrue or be likely to accrue from improved modes of raising the crops, or of improving the soil, or stock, or of the fabrication of the articles thus offered with the intention that the premiums shall be given for the most economical mode of improvement. And all persons offering to compete for premiums or improved modes of tillage, or the production of any crops or other articles, shall be required before such premiums are adjudged, to deliver to the awarding committee a full and correct statement of the process of such mode of tillage or production, and the expense and

value of the same with a view of showing accurately the profits derived or expected to be derived therefrom.

§ 3. It shall be the duty of each county society to publish annually a list of the awards, and an abstract of the treasurer's account in a newspaper, in the county if there be one, and if none, then in the nearest newspaper to said county, and to make a report of their proceedings during the year and a synopsis of the awards for the improvement in agriculture and manufacturers, together with an abstract of the several descriptions of these improvements, and also to make a report of the condition of agriculture in that county, which report shall be made out in accordance with the rules and regulations of the territorial board of agriculture, and shall be forwarded to the territorial board at their annual meeting, in each year, and no subsequent payment shall be made from the county treasury unless a certificate is presented to the clerk from the president of the territorial board showing that such reports have been duly made.

§ 4. That Thomas Gibson, Harrison Johnson, A. D. Jones, E. Estabrook, J. M. Thayer, Christian Bobst, Robert W. Furnas, Jesse Cole, S. A. Chambers, Jerome Hoover, Mills S. Reeves, Broad Cole, J. C. Lincoln, Harlin Baird, Joel T. Griffin, and E. H. Chaplin, be and they are hereby created a body corporate with perpetuate succession in the manner hereafter described, under the name and style of the Nebraska territorial board of agriculture.

§ 5. It shall be the duty of said board or a majority of them to meet at Omaha city as soon after the passage of this act as a majority of them may agree upon, and organize by electing a president, secretary and treasurer, and such other officers as they may deem necessary; also to determine by lot the time that each member shall serve, so that the term of service of one-half of the members shall expire annually on the day of the annual meeting. And the president shall have power to call meetings of the board whenever he may deem it expedient.

§ 6. There shall be held at some central point in the territory, to be agreed upon by the board at their session, an annual meeting of the board, together with the president of each county society or delegate therefrom duly authorized, who shall for the time being be ex-officio members of the territorial board of agriculture, for the purpose of deliberating and consulting as to the wants, prospects and condition of the agricultural interests throughout the territory; and at such annual meeting the several reports from the subordinate societies shall be delivered to the president of the territorial board, and the said president and delegate shall at this meeting elect suitable persons to fill all vacancies in the territorial board of agriculture.

§ 7. And it shall be the duty of said board to make an annual report to the general assembly of the territory, embracing the proceedings of the board for the past year and an abstract of the proceedings of the several subordinate societies, so as to give a general view of the condition of agriculture throughout the territory, accompanied by such recommendations as they may deem important and useful.

§ 8. That all county agricultural societies which may be organized under this act, be and the same are hereby declared bodies corporate

and politic, and as such shall be capable of suing and being sued, and capable of holding in fee simple such real estate as they may purchase or receive by donation, not to exceed eighty acres of land and the buildings thereon.

§ 9. That all deeds, conveyances and other agreements made to and by such county agricultural societies for the purchase of real estate, shall be good and valid in law and equity, and shall vest in a title in fee simple in such societies to said real estate.

§ 10. In all cases when such county agricultural societies shall purchase real estate as sites whereon to hold fairs, the county commissioners of such counties may, if they think it for the interest of the counties and societies, pay out of the county treasuries of such counties the same amount of money for the purchase and improvements of such sites as shall have been, or shall hereinafter be paid by said agricultural societies or individuals for such purpose.

§ 11. In all cases when agricultural societies shall be dissolved or cease to exist in any county where payments have been made for real estate or improvements upon such real estate, for the use of any agricultural society, then all such real estate and improvements shall vest in fee simple to the county making such payment.

§ 12. This act to take effect and be in force from and after its passage.

Approved Oct. 14, 1858.

AN ACT

To Authorize Citizens to View the Public Records.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all citizens of this territory, and all other persons interested in the examination of the public records, are by this act fully empowered and authorized to examine the same, free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

§ 2. This act to take effect and be in force from and after its passage.

Approved October 14th, 1858.

AN ACT

To Create a Lien in favor of Mechanics and others in Certain Cases.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That any person who shall perform any labor, or furnish any material or machinery, for the erection, reparation, or removal of any house, mill, manufactory, or other building, or appurtenance, by virtue of a contract or agreement, expressed or implied, with

the owner thereof or his agent, shall have a lien to secure the payment of the same, upon such house, mill, manufactory, or other buildings, or appurtenance, and the lot of land upon which the same shall stand.

§ 2. That every mechanic or other person doing or performing any work or furnishing any material for the erection, reparation, or removal of any house, mill, manufactory, or other building or appurtenance, erected, repaired, or removed, under a contract or agreement express or implied, between the owner thereof or his agent, and the builder or other person, whether such work shall be performed or material furnished as journeyman, laborer, carman, sub-contractor, or otherwise, whose demands for work so done or materials so furnished, has not been paid, may deliver to the owner of such building or his agent an attested account of the amount and value of the work and labor thus performed, or the materials thus furnished, and remaining unpaid; and thereupon such owner or his agent shall retain out of his subsequent payments to the contractors, the amount of such work and labor or material furnished, for the benefit of the person so performing or furnishing the same.

§ 3. Whenever any account of labor performed or materials furnished as referred to in the preceding section, shall be placed in the hands of the owner of any building or his agent, as above stated, it shall be the duty of such owner or agent to furnish his contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor they may, by amicable adjustment, or by arbitration, ascertain the true sum due, and if the contractor shall not, within ten days after the receipt of such papers, give the owner or his agent written notice that he intends to dispute the claim; or if, in ten days after giving notice, he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting to the demand, and the owner or his agent shall pay the same when it becomes due.

§ 4. If the contractor shall dispute the claim of this journeyman or other person, for work done or materials furnished as aforesaid, and the matter can not be adjusted between themselves, it shall be submitted to the arbitrament of three disinterested persons, one to be chosen by each of the parties and one by the two thus chosen, and the decision of any two of them shall be conclusive in the case submitted.

§ 5. When the account shall be adjusted as above provided, and the contractor shall not, within ten days after it is so adjusted, pay the sum to his creditors with the costs incurred, the owner or his agent shall pay the same out of the fund as above provided; and which amount due may be recovered from said owner by the creditor of said contractor, in an action at law, and to the extent in value of any balance due by the owner to his contractor under the contract with him at the time of the notice first given as aforesaid, or subsequently accruing to such contractor, under the same, if such amount shall be less than the sum due from said contractor to his creditor.

§ 6. If by collusion or fraud the owner of any building erected by contract as aforesaid or his agent, shall pay to his contractor any money in advance of the sum due on said contract, and if the amount still due

the contractor after such payment has been made, shall be insufficient to satisfy the demand made in conformity with the provisions of this act, for labor done and materials furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work or materials in the same manner as if no such payment had been made.

§ 7. That any person or persons entitled to a lien under this act shall make an account in writing of the item of labor, skill, machinery, and material furnished, or either of them, as the case may be, and after making oath thereto shall, within four months from the time of performing such labor and skill, or furnishing such machinery and material, file the same in the recorder's office of the county in which such labor, skill and materials shall have been furnished, which account so made and filed shall be recorded in a separate book to be provided by the recorder for that purpose, and shall from the commencement of such labor or the furnishing of such materials, and for two years after the completion of such labor or the furnishing of such materials operate as a lien on the several descriptions of structures and buildings, and the lots on which they stand, in the first section of this act named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required.

§ 8. That every person or persons holding such lien may proceed to obtain a judgment for the amount of his or their account thereon by civil action, and when any suit or suits shall be commenced on such accounts within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

§ 9. That when the owner or owners of any house or building, or his or their agents, as described in this act, shall suspend its progress or completion without the consent of such laborers, mechanics and furnishers, or if the progress or completion of the same be suspended by the decease of the owner or owners, at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics and furnishers thereto or any of them may, at their election, proceed with the same at their own costs, so far as to inclose such building, and thereby prevent such waste; Provided the work so done after said suspension shall be according to the contract, and the plan of the owner or owners.

§ 10. That if the person or persons who may erect as owner or owners any building described in the first section of this act, be not at the suspension or completion of the same, possessed of the legal but equitable title to the ground on which the same is erected (if the same be a fixture) and the fact of such defect of title be made to appear to the court before any judgment or judgments under this act may have been obtained; or if the same be returned by any legal officer to whom any execution under this act shall be directed, in either case, the court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building or buildings until the rent and issues thereof shall pay and satisfy the several liens on which judgments may be had against the same; Provided, this law shall not

be construed as to interfere with prior bona fide liens on grounds on which such building or buildings shall be erected as a fixture.

§ 11. That in all other cases of judgment or judgments obtained in favor of any lien holder or holders, if the property bound by such lien will not sell on execution, as provided by law in other cases, having been once duly offered, the court before whom such judgment or judgments may be obtained, may direct the officer aforesaid to lease the same in the same manner and for the same purpose pointed out in the preceding section, and the officer giving such lease or leases shall therein require the payment to be made to him or his successors in office, which successor or successors shall have the same power and perform the same duties therein as the maker of the lease or leases should or could do; and in cases where the money may be collected by said officer, on lease or leases made under this act, it shall be his duty forthwith to pay the same into court, where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgments in proportion to their several demands.

§ 12. That all lien or liens may be discharged by the payment of judgment or debt, with all legal costs before the property on which such lien or liens attach, be sold or leased under this act; and if any lien holder or holders after the same be duly tendered to him or them shall proceed at law, or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all lien and pay all costs.

§ 13. That if the owner or owners of the property which is subject to a lien under this act, be without the reach of process, or resident without the territory, any lien holders may proceed by attachment against the same as in other cases; and the court before whom the same attachment is pending on the entry of judgment on return of the proper officer, shall have the same power to order lease or leases, as is given in the tenth and eleventh sections of this act.

§ 14. That executors and administrators under this act shall have the same rights and be subject to the same liabilities that their testator or intestate would or might have if living.

§ 15. That the county recorders, for filing and recording contracts and accounts under this act shall be paid the same fees that they are legally entitled to in other cases.

§ 16. Each and every person in favor of whom any such lien has existed after having received satisfaction of his or their debt, or after final judgment against him or them by a competent tribunal, showing that nothing is due by reason of such claims shall at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his or their legal representatives, lodge a certificate with said recorder that said debt is satisfied; and said lien removed, which certificate shall be filed, and recorded by the recorder on the margin of the record in the same manner that releases of mortgages are now by law required to be recorded; and when so recorded shall forever discharge and release said lean; and if such person or persons having received such satisfaction as aforesaid by himself or attorney, or judgment having been rendered

him as aforesaid shall not within ten days after request in writing, lodge a notice in writing with the recorder as is prescribed in this section, he or they neglecting or refusing to do so, shall forfeit and pay, to the party or parties so aggrieved any sum of money not exceeding one half the debt claimed as a lien on such property according to the circumstances of the case, to be recovered in civil action; and the party lodging such certificate as aforesaid shall pay to the recorder twenty-five cents for recording each notice or certificate as aforesaid.

§ 17. That any person who shall hold a lien under the provisions of this act, may in addition to the remedy herein provided for, proceed by petition in chancery, as in other cases of liens against the owner or owners of, and all other persons interested, either as lien holders or otherwise, in any such house, mill, manufactory, or other building or appurtenance in the first section of this act mentioned, and the lot or lots of land on which the same shall stand and obtain such final decree therein for the rent or sale thereof as justice and equity may require, anything in this act to the contrary notwithstanding.

§ 18. All acts and parts of acts heretofore passed, inconsistent with the provisions of this act are hereby repealed, saving and reserving all action and causes of action that may have accrued under and by virtue of any previous act or law of this territory and the same may be prosecuted to judgment and enforced the same as though this act had not been adopted and former act repealed.

§ 19. This act to take effect and be in force from and after its passage.

Approved October 15th, 1858.

AN ACT

To Change the Times for Holding Courts in the Counties Comprising the Third Judicial District of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the next term of the district court for the county of Washington, shall be held on the third Tuesday of November, A. D. 1858, instead of the second Tuesday as now provided by law.

§ 2. All writs, process, matters and proceedings whatsoever, returnable at the next term of said court, shall be deemed and held to be returnable at the term herein appointed, to be held on the said third Tuesday of November, A. D. 1858, and the same shall for every purpose be deemed and held to be the same term heretofore appointed, to be held on the second Tuesday of November next.

§ 3. After the year 1858, the terms of the district court shall be held in the third judicial district, at the times following, to wit:

In the county of Burt, on the first Monday of May, and on the fourth Monday of October, in each year.

In the county of Dakota, on the second Monday of May, and on the first Monday of November, in each year.

In the county of Washington, on the fourth Monday of May, and on the third Monday of November, in each year. In other organized counties of said district, at such times as the judge thereof may appoint

§ 4. This act shall take effect and be in force from and after its passage.

Approved October 18, 1858.

AN ACT

Concerning the Powers of District Judges.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That whenever a vacancy shall occur in the office of district judge, in any district of this territory, or whenever it shall appear by the affidavit to the satisfaction of any district judge in the territory, that the judge of any other district is unable to act, on account of sickness, interest or absence from the district, or from any other cause, the judge to whom application may be made, shall have power to make any order, or do any act relative to any suit, judicial matter, or proceeding, or to any special matter arising within the district where such vacancy or disability exists, which the judge of such district court could make or do; and the order or act shall have the same effect as if made or done by the judge of such district.

§ 2. This act shall take effect and be in force from and after its passage.

Approved October 20, 1858.

AN ACT

To Fix the Time of Holding the General Elections.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the general election for delegate to congress, members of the legislative assembly, and all other territorial, district, county and precinct officers, now provided by law to be chosen on the first Monday in August of any year, be and the same shall hereafter be held on the second Tuesday of October.

§ 2. That all laws and parts of laws inconsistent with this act be and the same are hereby repealed.

Approved October 25th, 1858.

AN ACT

For the Regulation of County Jails.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the judges of the district courts of the

several judicial districts of this territory shall immediately after the passage of this act, and from time to time thereafter, as they may deem necessary, prescribe in writing rules for the regulation and government of the jails in the several counties within their respective districts, upon the following subjects:

1. The cleanliness of the prison and prisoners.
2. The classification of prisoners in regard to sex, age and crime, and also persons insane, idiots and lunatics.
3. Beds and clothing.
4. Warming, lighting and ventilation of the prison.
5. The employment of medical and surgical aid when necessary.
6. Employment, temperance and instruction of the prisoners.
7. The supplying of each prisoner with a Bible.
8. The intercourse between prisoners and their counsel and other persons.
9. The punishment of prisoners for violation of the rules of the prison.
10. Such other regulations as said judges may deem necessary to promote the welfare of said prisoners. Provided that said rules shall not be contrary to the laws of this territory.

§ 2. That the said judges shall, as soon as may be, cause a copy of said rules to be delivered to the county commissioners in the several counties in their respective judicial districts; and it shall be the duty of said commissioners forthwith to cause the same to be printed, and to furnish the sheriff of their county with a copy of said rules, for each and every room or cell of said jail, and also to forward a copy of said rules by mail to the territorial auditor, who shall carefully file away and preserve the same.

§ 3. That the said sheriff shall, immediately on the receipt of said rules, cause a copy thereof to be posted up and continued in some conspicuous place in each and every room or cell of said jail.

§ 4. That the said judges may from time to time, as they may deem necessary, revise, alter or amend said rules, and such revised, altered or amended rules, shall be printed and disposed of by said commissioners and sheriff in the same manner as is directed by the second and third sections of this act.

§ 5. The sheriff, or, in case of his death, removal or disability, the person by law appointed to supply his place, shall have charge of the county jail of his proper county and of all persons by law confined therein, and such sheriff or other officer is hereby required to conform, in all respects, to the rules and directions of said district judge above specified, or which may, from time to time, by said judge be made and communicated to him by said commissioners.

§ 6. That the sheriff, or other officers performing the duties of sheriff, of each county in this territory, shall, as soon as may be after the passage of this act, procure, at the expense of the proper county, a suitable book, to be called the jail register, in which the said sheriff, by himself or his jailer, shall enter:

1. The name of each prisoner, with the date and the cause of his or her commitment.

2. The date or manner of his or her discharge.

3. What sickness, if any, has prevailed in the jail during the year, and if known what were the causes of such disease.

4. Whether any or what labor has been performed by the prisoners, and the value thereof.

5. The practice observed during the year of whitewashing and cleaning the occupied cells or apartments, and the times and seasons of so doing.

6. The habits of the prisoners as to personal cleanliness, diet and order.

7 The operations of the rules and directions prescribed by the district judge.

8. The means furnished prisoners of literary, moral and religious instruction and of labor.

9. All other matters required by said rules, or in the discretion of such sheriff deemed proper; that the said sheriff or other officers performing the duties of sheriff, shall carefully keep and preserve the said jail register, in the office of the jailer, of his proper county, and at the expiration of said office shall deliver the same to his successor in office.

§ 7. That the sheriff or other officer performing the duties of sheriff, shall, on or before the first day of November in each year, make out in writing from said jail register, a jail report, one copy of which said report, he shall forthwith file in the office of the clerk of the district court of the proper district, one copy with the county clerk of his county, for the use of the commissioners thereof, and one copy of said report, he shall transmit to the secretary of the territory; and it shall be the duty of the secretary of the territory, to communicate the reports of the several sheriffs of this territory to the legislative assembly, on or before the first day of its session annually.

§ 8. That it shall be the duty of the district court, to give this act in charge to the grand jury once each term of said court, and lay before them any and all rules, plans or regulations, established by the district judge, relating to county jails and prison discipline, which shall then be in force.

§ 9. That the grand jury of each county in this territory, shall, once at each term of the district court while in attendance, visit the jail, examine its state and condition; examine and inquire into the discipline and treatment of prisoners; their habits, diet and accommodations, and it shall be their duty to report to said court in writing, whether the rules of the said district judge have been faithfully kept and observed, or whether any of the provisions of this act have been violated, pointing out particularly in what said violation if any consists. It shall also be the duty of the county commissioners of each county of this territory, to visit the jail of their county once during each of their sessions, in March, June and December of each year.

§ 10. That it shall be the duty of the county commissioners, at the expense of their respective counties, to provide suitable means for warming the jail and its cells or apartments, frames and sacks for beds, night buckets and such other permanent fixtures and repairs as may be prescribed by the said district judge; said commissioners shall

also have power to appoint a physician to the jail, when they may deem it necessary, and pay him such annual or other salary as they may think reasonable and proper, which salary shall be drawn out of the county treasury; and said medical officer, or any physician or surgeon who may be employed in the jail, shall make a report in writing whenever required by the said commissioners, district judge or grand jury.

§ 11. It shall be the duty of the sheriff of each county to provide first bed clothing, washing, nursing when required, and board generally, and all necessaries for the comfort and welfare of said prisoners, as the said judge, by his said rules shall designate, for all persons confined by law, and he shall be allowed such compensation for services required by the provisions of this act, as may be prescribed by said commissioners. Provided, that this section shall not be so construed as to give the sheriff a claim on the county for board or necessaries furnished any prisoner confined for debt only.

§ 12. The sheriff shall visit the jail in person and examine into the condition of each prisoner, at least once each month, and once during each term of the district court, and it is hereby made his duty to cause all the cells and rooms, used for the confinement of prisoners, to be thoroughly whitewashed, at least three times in each year.

§ 13. The jailer or keeper of the jail shall, unless the sheriff elect to act as jailer in person, be a deputy, appointed by the sheriff, and such jailer shall take the necessary oaths before entering upon the duties of his office. Provided, the sheriff shall in all cases be liable for the negligence and misconduct of the jailer, as of other deputies.

§ 14. That if the sheriff or jailer, having in charge of any county jail, shall neglect or refuse to conform to all or either of the rules and regulations established by said judge, or to any other duty or duties required of him by this act, he shall, on conviction thereof, by indictment for each case of such failure or neglect of duty as aforesaid, pay into the county treasury of the proper county, for the use of such county, a fine not less than five dollars, nor more than one hundred dollars, to be assessed by the district court of the proper district.

§ 15. This act to take effect and be in force from and after its passage.

Approved October 29th, 1858.

AN ACT

To Amend an Act entitled "An Act for Locating, Opening, Repairing and Changing County Roads," approved January 26, 1856.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That whenever any of the inhabitants of any county in this territory desire the opening of a new road or the change or discontinuance of any road heretofore established, they shall give at least twenty days notice, by posting a notice on the court house door and at two other public places in the vicinity of the road sought to be

located, changed or discontinued, setting forth the time when they will apply by petition to the board of county commissioners, and a particular statement of the location, change or discontinuance sought to be effected.

§ 2. Upon the presentation of a petition, after notice given as provided in the preceding section, the board of county commissioners shall proceed to hear the parties interested in the case; and if in their judgment it is probable that the location or change proposed will advance the interests of the county, they shall appoint a commissioner, who after being duly sworn, faithfully to discharge his duty without fear, favor or hope of reward, shall proceed to view the road proposed, and if in his opinion the public good requires the proposed new road or change in a road already established, he shall proceed to lay out, mark and plat the same, according to law, and for this purpose, if necessary, may employ a surveyor at a rate not exceeding three dollars per day, and two chain carriers and one axman at a rate not exceeding two dollars per day.

§ 3. It shall be the duty of the commissioner, within twenty days after making the location and survey as provided in the next preceding section, to make out and file his report, together with the plat and field notes, if any, with the county clerk, who shall record the report in the book kept for recording the proceedings of the board of county commissioners; and such location and survey shall be deemed a county road.

§ 4. If in the opinion of the commissioner the public good does not require the location or change proposed to be made, he shall so report to the county clerk, who shall record the report as above provided, and the petitioners shall pay all costs accruing in the case, and to this end, the board of county commissioners shall require two or more of the petitioners to enter into bond to be approved by them, payable to the county, conditioned, that they will pay all costs which may accrue if the case is decided adversely to their petition.

§ 5. It shall be the duty of the county clerk, upon application, to furnish each supervisor of roads, with a particular description of the boundary of his district, and said supervisor shall have power and it shall be his duty, to call upon all persons liable to work upon the roads, residents in his district, to perform labor upon the roads, at such times and places as he may deem best for the public convenience, under his direction, giving them at least three days' notice to that effect.

§ 6. If any person liable to work on the public roads, after being duly notified as above provided shall neglect or refuse to perform labor by himself or an equivalent substitute, or to pay one dollar and fifty cents per day for the labor required to be performed, it shall be the duty of the supervisor to collect the same by civil action before any justice of the peace within the precinct in which his district is in whole or in part situated, and the delinquent list furnished by the supervisor, under oath shall be received in evidence on the trial of the case.

§ 7. If any supervisor shall neglect or refuse to keep the roads in his district in as good condition as the number of hands in his district would reasonably enable him to do, he shall be liable on his official bond, to pay to the use of the county, a fine of not less than five

dollars, nor exceeding fifty dollars, to be recovered by civil action, and also liable to all damages which may be sustained by the traveling public, by reason of his neglect to keep the roads in good repair.

§ 8. If any person shall knowingly and willfully fence up or across any public road, or otherwise obstruct the free passage of the same, he or she shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined for each offense in a sum not less than five dollars, nor more than fifty dollars.

§ 9. All moneys collected by the supervisor of roads, in lieu of labor, and the proceeds of all fines collected under the provisions of this act, shall be expended by the proper supervisor, for the improvement of the roads in his district.

§ 10. Supervisors of roads shall make a semi-annual settlement, under oath, with the board of county commissioners, at their April and October terms, showing the amount of money which has come into their hands by virtue of their office, and how the same has been expended; and they shall be allowed the sum of two dollars per day, for all time necessarily employed, exceeding two days' labor required by law to be performed; and in default of making such settlement, shall forfeit all claim to allowance for extra services.

§ 11. The supervisors shall collect all specific tax levied on lands for road purposes, by giving three days' notice to all persons owing lands and living in his district, by leaving a written or printed notice at each person's usual place of residence, specifying the time and place where such tax may be paid in work; said supervisor shall also post one such notice in some public place in his district. The supervisor shall allow all persons working out said specific tax the sum of one dollar and fifty cents per day, and all lands upon which said tax is not paid according to notice, the supervisor shall, on the first Monday of November, of each year, return to the collector of taxes as delinquent, and then said collector shall proceed to collect said tax for the benefit of said road district, as delinquent taxes on lands are collected in other cases; said taxes when collected to be paid to said supervisor, to be expended according to law.

§ 12. It shall be the duty of the supervisor of the several road districts to cause a guide board to be placed at the beginning, terminus and intersection of every county and territorial road in his district, which guide boards shall be attached to permanent and durable posts, trees or other permanent fixtures, at the proper points on said roads, and shall legibly painted thereon the names and distances to the principal towns or places on said roads.

§ 13. If any person shall willfully injure, destroy or tear down the posts or guide boards so erected for the public use, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for said offense in a sum of not less than five nor more than twenty dollars.

§ 14. All acts and parts of acts conflicting with this act are hereby repealed. This act shall take effect and be in force from and after the first day of January, 1859.

Approved October 29, 1858.

AN ACT

Authorizing Private Persons to Sue out Writs of Quo-Warranto and Mandamus.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That when any citizen of this territory shall claim any office which is usurped, invaded or unlawfully held, and exercised by another, the person so claiming such office, shall have the right to file in the district court an information in the nature of a quo-warranto upon his own relation, and with or without the consent of the prosecuting attorney of the district where such writ is issued out, and such person shall have the right to prosecute said information to final judgment in all other respects as provided in chapter number twenty-eight of the code, entitled "Informations." Provided, he shall have first applied to the prosecuting attorney of the proper district to file the information, and the prosecuting attorney shall have refused or neglected to file the same.

§ 2. Any private person may on his own relation, sue out writs of mandamus, without application to the prosecuting attorney.

§ 3. Persons suing out either of the writs under the provisions of this act, shall be liable to costs as in civil cases.

§ 4. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

§ 5. This act to take effect and be in force from and after its passage.

Approved October 29, 1858.

A BILL

For An Act to Provide for the Valuation and Assessment of the Real and Personal Property, and for the Levying and Collection of Taxes in the Territory of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following classes of property shall be exempt from taxation, and may be omitted from the list herein required to be given.

1. The property of the United States, and of this territory, including school lands.

2. The property of a county, incorporated city or town, or school district, when devoted to the public use and not held for pecuniary profit.

3. Public grounds by whomsoever devoted to the public use, and including all places for the burial of the dead.

4. Fire engines and implements used for extinguishing fires, with the grounds used exclusively for their buildings, and for the meetings of fire companies.

5. The grounds and buildings of library, scientific, benevolent and religious institutions or societies devoted solely to the appropriate

objects of these institutions not exceeding three acres in extent, and not leased or otherwise used with a view to pecuniary profit.

6. The books, papers, furniture, scientific, or other apparatus pertaining to the above institutions, and used solely for the purposes above contemplated, and the like property of students in any such institutions used for the purposes of their education.

7. Money and credits belonging exclusively to such institutions, and devoted solely to sustaining them, but not to exceed in amount the same prescribed in their charter, or act of incorporation.

8. Animals not specified in the next section, the wool shorn from the sheep, of the person giving the list, and his crop harvested within one year previous to the listing. Private libraries not exceeding one hundred dollars in value, and family pictures; the kitchen furniture of each family; the beds and bedding, requisite for the use of the family, one bed and the bedding thereof, for each single person not a member of another family, the apparel of every family and person actually used for wearing, with all food provided for each family; but no person, for whom a compensation for board or lodging is received or expected, is to be considered a member of a family within the intent and meaning of this act.

9. The polls or estates or both of persons who by reason of age or infirmity, may in the judgment of the assessor be unable to contribute to the public charge; such opinion being subject to revision by the county board of equalization.

§ 2. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed; and this section is intended to embrace lands and lots in towns, including lands bought from or donated by the United States and from this territory, and whether bought on a credit or otherwise; ferry franchises, which for the purposes of this act are to be considered as real property; horses and neat cattle; mules and asses, sheep and swine; money, whether in possession or on deposit, and including bank bills, money, property or labor due from solvent debtors on contract or on judgment, and whether within this territory or not; mortgages, and other securities and accounts bearing interest; stock or shares in any bank or company incorporated by this territory, or any other state or territory, and situated in or transacting business in this territory; public stock, loans, household furniture not exempted, and including gold and silver plate, musical instruments, watches and jewelry; private libraries, for their value over one hundred dollars; pleasure carriages, stage hacks, omnibuses, and other vehicles for transporting passengers, wagons, carts, drays, sleighs, and every other description of vehicles or carriage; boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this territory solely or not, if owned wholly or in part by persons who are inhabitants of this territory; annuities, but not including pensions from the United States or any state of the union; money invested in manufactories, including buildings, machinery and materials; also all moneys used in merchandising-together with all other property not above exempted, though not herein specified.

§ 3. The term "credits," as used in this act, includes every claim and demand for money, labor, or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money in property of any kind; and secured by deed, mortgage, or otherwise; but pensions from the United States, or any state, are not included in the above terms.

§ 4. On or before the first Monday of February of each year, the county commissioners of each county are required to furnish the county assessor with suitable notices and blank forms for the assessments, and such instructions as may be needed to secure full and uniform assessment and returns.

§ 5. The list of each person shall contain first his lands by township range and section, and any division or part of a section lying in the county in which the list is required, and when such parcel of land is not a congressional division or subdivision, it shall be listed and described in some other mode sufficient to identify it, and his town lots, naming the town in which they are situated, and their proper description by number and block, or otherwise, according to the system of numbering in the town. His personal property by the following particulars: Amount of capital employed in merchandise; amount of capital employed in manufacturing; number of horses; number of mules and asses; number of neat cattle; number of sheep; number of swine; number of carriages and vehicles, of every description; amount of moneys and credits; amount of taxable household furniture; amount of stock or shares in any incorporated company or company not incorporated; amount of all other personal property not exempted by law and not enumerated; the number of polls.

§ 6. The above list of items may be extended, or diminished, or varied, at the discretion of the county commissioners, so as to obtain such facts as they may deem desirable.

§ 7. The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor or by any other officer authorized to administer oaths, and shall be certified to by him, and the oath may be printed upon the blank form, and shall be in substance as follows: I (A. B.) solemnly swear, that I have listed above (or within), all the lands, town lots, personal property, money and credits, subject by law to taxation, and owned by me, or required by law to be listed by me for any other person or persons (insert as guardian, husband, parent, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor, as the case may be), according to the best of my knowledge.

§ 8. When any person who is required to render the above statement fails to do so, from absence or sickness, and when any person refuses to do so, or to take or subscribe to the oath required, the assessor shall ascertain according to the best information he can obtain, the number and value of the several species of property required, and to that end he is hereby authorized to examine on oath, any person whom he supposes to have knowledge in relation thereto, and if any person refuses to testify, he shall forfeit the sum of five dollars, to be recovered by civil action, in the name and to the use of the county; and the as-

essor shall make a minute of the names of persons refusing to swear to this list, or to testify as to the value of property, and shall note the same on the lists, and return the same to the board of county commissioners, and the county board of equalization shall add fifty per cent to the amount of property returned by the assessor, as the list of the person refusing to swear.

§ 9. The said statements of persons refusing to swear, shall be indorsed with the name of the person whose property is therein listed, and the assessors shall file them in alphabetical order, and return them to the office of the county clerk, by the second Monday of April next ensuing, at which time or before he shall also prepare and deliver his assessment roll.

§ 10. All property is to be valued by the assessor, except such as is herein required to be valued by the owner.

§ 11. The assessor shall take and subscribe to an oath, to be certified to by the officer administering it, and attached to the assessment roll; which oath is to be in substance as follows:

I (C. D.), assessor of county, do solemnly swear that the value of all property, moneys and credits, of which a statement has been made, and verified by the oath of the person required to list the same, is herein truly returned, as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body corporate, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value, and that as I verily believe the full value thereof is set forth in the above returns; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property, which he was required by law to list. Nor have I in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessments of property for taxation.

§ 12. Every inhabitant of this territory of full age and sound mind, unless excepted by the provisions of this act, shall list all property subject to taxation in this territory, of which he is the owner, or has the control or management in the manner herein directed; but the property of a ward is to be listed by his guardian; of a minor, having no other guardian, by his father, if living; if not, then by his mother, if living, if not, then by the person having the property in charge; of a married woman, by her husband, but if he be unable or refuse, then by herself; of a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent, by the executor, administrator or heirs; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner; property under mortgage or lease is to be listed by and taxed to the mortgager or leasor, unless it be listed by the mortgagee or lessee.

§ 13. Commission merchants, and all persons trading or dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this territory, are, for the purposes of taxation, to be deemed the owners of the property in their possession.

§ 14. All personal property is to be listed, assessed and taxed in the

county where the owner resides, on the first of March of the then current year; but if the owner resides out of the territory, it is to be listed and taxed where it may be at the time of the listing, and if the agent or person having charge of such property neglects to list it, he will be subject to the penalty hereafter provided.

§ 15. A person required to list property in behalf of another, shall list it in the same county in which he would be required to list it if it were his own (except as herein otherwise directed), but he must list it separate from his own, naming the person or estate to whom it belongs; but the undivided property of a person deceased, belonging to his heirs, may be listed as belonging to such heirs, without enumerating them.

§ 16. The property of corporations or companies constructing canals, railways, plank roads, graded roads, turnpike roads, and similar improvements, is taxed through the shares of the stockholders; and when any such stockholders are non-residents, their interests are to be taxed in this territory in the county in which is either terminus of the structure in this territory; and to that end the assessor is directed to require the secretary, or clerk (or whatever officer of corresponding duties there may be) to render under oath a list of the names and residences of such non-resident stockholders, with the number of shares belonging to each, and both the par value and the market value of the shares; but if such secretary or other corresponding officer does not reside in this territory, the assessor may require the same of any other officer residing in the territory, and if such officer refuses to give the requisite information, then the shares of non-residents shall be assessed to the company or corporation, and may be ascertained in the best manner possible within the power of the assessor, and the county commissioners may at their discretion add fifty percent to the amount so returned, and the property of the company shall be liable to sale as real estate, for the taxes of the stockholders, and the county first assessing is to levy and collect the tax.

§ 17. When a person is doing business in more than one county, the property and credits existing in any one of the counties, are to be listed and taxed in that county, and credits not existing in nor pertaining especially to the business in any one county, are to be listed and taxed in that county where his principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

§ 18. Insurance companies of every description, except mutual insurance companies, chartered in other states, and transacting business in this territory, shall be taxed one per cent for county purposes, and one per cent for territorial purposes, upon the amount of premiums taken by them, during the year previous to the listing in the county where the agent conducts the business; and the agent shall render the list, and shall be personally liable for the tax; and if he refuse to render the list, or to swear as herein required, the amount may be assessed according to the best knowledge and discretion of the assessor, and the county board of equalization may, at their discretion, add fifty per cent to the amount returned by the assessor.

§ 19. All taxable property is to be listed and valued each year, and

real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantage, the general improvement in the vicinity and all other elements of value.

§ 20. Depreciated bank notes and depreciated stocks or shares in corporations or companies may be listed at their current value and rate. Credits shall be listed at such sums as the person listing them believes will be received, or can be collected, and annuities at the value which the person listing believes them to be worth in money.

§ 21. In making up the amounts of credits which any person is required to list, he will be entitled to deduct from this gross amount, the amount of all bona fide debts owing by him, but no acknowledgment made for the purpose of being so deducted shall be considered a debt within the intent of this section, and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor—and if there are other surities able to contribute then so much only as shall be deducted as he in whose behalf the list is made will be bound to pay or contribute, but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance—nor on account of an unpaid subscription to any society—nor on account of a subscription to, or installments payable on the capital stock of any company or corporation.

§ 22. Any person owning or having in his possession or control in this territory, with authority to sell the same, any personal property purchased either within or out of the territory, with a view of selling the same at an advanced price or profit, or which has been consigned to him for the purpose of being sold within the territory shall be held to be a merchant for the purposes of this chapter, such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the average value of such property in his possession, or control during the year next previous to the time of listing, and if he has not been engaged in that business so long then he shall take the average during the time he may have been so engaged, and if he be commencing he shall take the value of the property at the time of listing.

§ 23. Any person who purchases, receives or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, purifying, or by the combination of different materials with a view of making gain or profit by so doing, and by selling the same, shall be held to be a manufacturer for the purposes of this chapter, and he shall list for taxation the average value of such property in his hands, estimated as directed in the previous section in case of merchants. But the value shall be estimated upon the materials only, entering into the combinations or manufacture.

§ 24. On or before the second Monday of April annually, the assessor shall make out and deliver to the county clerk, an assessment roll, containing in tabular form and alphabetical order, the names of the persons and bodies corporate, in whose names property has been listed in this county, with the several species of property, and the value as

herein before directed, with the columns of numbers and values footed up, and in a column to be provided for that purpose, he shall write the words "by the assessor," when the list was made by himself, together with the words "absent" or "sick," or the words "refused to list," or "refused to swear," or such other words as will express the cause why the person required to make the list did not make it; and a neglect to make it shall be taken as a refusal.

§ 25. As soon as practicable, after the assessment roll is filed, and before the first Monday of May next ensuing, the county clerk shall make out an abstract thereof, containing the whole number of acres of land listed in the county, and the total value thereof; the total valuation of townlots; the amount of property invested in merchandise; the amount of property invested in manufactures; the number of horses, and their total value; the number of mules and asses, and their total value; the number of neat cattle, and their total value; the number of sheep, and their total value; the number of swine and their total value; the gross amount of all other personal property, with money and credits; which abstract the clerk is directed to transmit without delay to the auditor of the territory. And the county commissioners are authorized to direct the clerk to add to the above list of items such other items as they may deem advisable; and it shall be the duty of the auditor of the territory to furnish such forms for the use of the county commissioners, assessors, clerks, and other officers of the revenue, as shall secure uniformity of proceedings and returns throughout the territory.

§ 26. The territorial auditor, and treasurer shall constitute the territorial "board of equalization," and said board of equalization shall hold a session at the capitol of the territory, commencing on the second Monday of May of each year, and it shall be the duty of said board to examine the various county assessments, so far as regards the territorial tax, and to equalize the valuation of real estate in the several counties, whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors, and to decide upon the rate of territorial tax, which shall be levied in each county, but not to exceed three mills on the dollar.

§ 27. Such equalization may be made either by changing any of the assessments, or by varying the rate of taxation on the different counties as may be found most convenient, but in either case the board of equalization is directed to preserve unchanged as far as practicable what would have been the aggregate amount of valuation in the territory had no such equalization been made.

§ 28. On or before the first Monday of June the territorial auditor is required to transmit to the county clerk of each county, a statement of the changes (if any), which have been made in the assessment or valuation of real estate in his county, and of the rate of taxation required in said county, for the territorial tax, as directed to be levied, and collected by the territorial board of equalization. And if the territorial board of equalization shall fail to fix the rate of taxation, in any or all of the counties, then the auditor is required to notify the county clerk, that the rate to be levied and collected in such county or counties, is at the rate

of three mills, on the dollar of the equalized valuation of property in the county.

§ 29. The county commissioners of each county shall constitute a board of equalization for the county; and said board or any two of them, shall hold a session of at least three days at the county seat, commencing on the second Monday of June of each year, for the purpose of correcting the assessment roll in their county, and during the sitting of said board, any person feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any supposed error in the listing or valuation of his property whether real or personal, and if any person returned as refusing to render a list, or to be sworn thereto, or to the list of property of another, can show good cause for such failure or refusal, the penalty herein provided may be remitted.

§ 30. On the first Monday of July of each year, the county commissioners shall meet at the county seat, to levy the necessary taxes for the current year, and they may levy the taxes at any time after the first Monday of July, if the statements from the territorial or county board of equalization has not been received; but such levy shall not be postponed for more than ten days, and they shall levy the taxes as herein directed:

For territorial revenue, as directed by the territorial board of equalization, but not to exceed three mills on the dollar of the equalized assessments for ordinary county revenue, including the support of the poor. Not more than six mills on the dollar, and a poll tax of fifty cents for the support of schools, not less than one mill, nor more than six mills on the dollar. For roads, a poll tax of one and a half dollars, to be paid in money or in labor, at the rate of one and a half dollars per day, at the option of the person so taxed, and a land tax of three dollars on each one hundred and sixty acres of entered or preempted land, lying without the limits of any incorporated town or city, and in the same proportion for a greater or less quantity; which tax shall be paid in money or in labor, at the rate of one and a half dollars per day, at the option of the person so taxed—and the receipts of the district supervisor for labor done, shall be received by the county collector, for their several amounts in discharge of said poll and land tax.

§ 31. As soon as practicable, after the taxes are levied, the county clerk shall make out a tax list in tabular form, and in alphabetical order having distinct columns for lands, town lots, and personal property, with the valuation hereon, and the amount of the several taxes for territorial, county, school and road purposes, in separate columns, and the amount of the several species of tax in another column, and also a column for delinquent taxes, according to the forms furnished by the auditor or county commissioners, which list shall be kept by the county clerk as the property of the county; the clerk shall also prepare a duplicate of the tax list for his county, and deliver the same to the county treasurer, on or before the first day of September following the date of the levy for the current year.

§ 32. An entry is required to be made upon the tax list and its duplicate, showing what it is, and for what county and year it is, and the county commissioners shall attach to the lists, their warrants under

their hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied according to law; and no informality in the above requirements shall render any proceedings for the collection of taxes illegal.

The county clerk shall take the receipt of the county treasurer on delivering to him the duplicate tax list with the warrant of the county commissioners attached, and such list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained.

§ 33. The county treasurer of each county shall be the collector of the taxes, and shall give bond in good and approved sureties to the county commissioners in the sum of ten thousand dollars, for the faithful discharge of his duties; and the county commissioners of any county may at any time, when in their opinion the safety of the county treasury may demand it, require such farther security to be given by the treasurer as they may deem necessary.

§ 34. The treasurer on receiving the tax list and warrant from the county clerk, shall forthwith proceed to collect the taxes therein levied, and for that purpose it shall be his duty to attend at the usual place of holding elections in each precinct of his county, for two days during the month of September, and from nine o'clock in the morning until four o'clock in the afternoon of each day, for the purpose of receiving taxes from any person who shall at that time wish to make payment; and the treasurer shall give at least two weeks' notice of the time when he will set in each precinct, by publishing the same in some paper of the county, if there be one, or by posting at least two written or printed notices of the time in each precinct, if there be no county newspaper; and it shall be the duty of the treasurer to attend at the county seat for the balance of the month of September, and during the month of October following, to receive the taxes not yet paid; and he is also authorized and required to collect so far as practicable the taxes remaining unpaid on the list of the former year or years. In all cases where taxes are paid, he shall give a receipt to the person paying the same.

§ 35. Territorial warrants are receivable for the amount payable into the territorial treasury, and county warrants are receivable at the treasury of the proper county for the amount payable into the county treasury, and city warrants and city script shall be received for city taxes, but specie, or its equivalent only, is receivable for the school tax, and road taxes may be discharged as provided in section 31.

§ 36. When a territorial, or county, or road warrant is received by the treasurer, he is directed to indorse on it the name of the person from whom it was received (the amount for which it was received), and the date thereof; and from that date the warrant is to be regarded and considered as canceled, and can not be re-issued; and the treasurer is required to write upon the face of it, "received for taxes," but when the warrant amounts to more than is to be paid by the person presenting it, the treasurer shall give him a certificate for the balance due him which certificate is also receivable for taxes in the same manner as the original warrants.

§ 37. If on the assessment roll or tax list there be any error in the name of a person assessed or taxed, the name may be changed, and the tax collected from the person intended if he be taxable, and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, ascertain that any land or other property is omitted, he shall report the fact to the assessor, who upon being satisfied thereof, will enter it upon his assessment roll, and assess the value, and the treasurer will enter it upon the tax list, and collect the tax as in other cases.

§ 38. No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under this law, to attend at the place and time of the treasurer's sitting in his precinct for the purpose of receiving taxes, and there pay the same, or to attend at some other time within the two months allowed, when the treasurer is not engaged in collecting taxes in any of the precincts, at the treasurer's office at the county seat, and pay his taxes, and if any person neglect so to attend and pay his taxes until after the first day of November next succeeding the levying of the taxes, the treasurer is directed to make the same by distress and sale of his personal property, if he have any except such as is exempt by law from taxation, and the tax list alone will be a sufficient warrant for such distress and sale.

§ 39. After the first day of November the unpaid taxes of the current year become delinquent, and shall draw interest at the rate of fifty per cent per annum, and taxes upon real property are hereby made a perpetual lien thereupon against all persons, and bodies corporate except the United States, and this territory.

§ 40. When the treasurer distrains goods, he may keep them at the expense of the owner, and shall give notice of the time of their sale, within five days after the day of the taking in the manner that constables are required to give notice of the time of the sale of personal property in execution, and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding three days, and shall adjourn once at least when there are no bidders, and in case of an adjournment he shall put up a notice thereof at the place of sale; any surplus remaining above the taxes, charges for keeping, and fees for sale, shall be returned to the owner, and the treasurer shall on demand render an account in writing of the sale and charges.

§ 41. If the treasurer be resisted or impeded in the execution of his office, he may require any suitable person or persons, to aid him therein, and if any such persons refuse to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action, in the name and for the use of the county; and the person or persons resisting shall be liable as in the case of resisting the sheriff, in the execution of civil process.

§ 42. The treasurer shall continue to receive payment of all taxes after the first day of November, upon the above terms until collected by distress or sale.

§ 43. Whenever in the collection of any district, town, city, or local tax which may have been levied according to law, and the collector is not able to make the tax by distress and sale of personal property, and

real estate is to be sold for the same, it shall be the duty of the collector of the tax, to send such delinquent list to the county treasurer on or before the first day of November of each year. And the county treasurer shall receive the delinquent list, advertise the same, and sell the lands as directed in cases for collection the territorial and county taxes, and shall credit the proper district, town, city or locality for the amount of taxes so collected, which shall be subject to the order of the proper collecting officer.

§ 44. The treasurer shall give notice of the sale of real property, by publication thereof, once a week for three consecutive weeks, commencing the first week in April, preceding the sale, in a newspaper in his county if there be one, and by a written or printed notice, posted on the door of the court house, or building in which the courts are commonly held, for three weeks previous to the sale; and if there be no newspaper published in the county, the like notice shall be given by posting one written or printed notice for the like length of time in each election precinct in which any land to be sold is situated, and one notice on the court house door; such notice shall contain a notification that all lands, on which the taxes of the preceding year (naming it) remain unpaid, will be sold, and the time and place of the sale; and said notice must contain a list of the lands to be sold, and the amount of taxes due. The publication in the newspaper, shall be at the expense of the county.

§ 45. On the first Monday of May in each year, between the hours of nine o'clock A. M. and five o'clock P. M., the treasurer is directed to offer at public sale, at the court house, or place of holding courts in his county, all lands on which the taxes levied for the previous year still remain unpaid, and he may adjourn the sale from day to day (Sundays excepted), until the sale is complete.

§ 46. The person who offers to pay the amount due on any parcel of land for the smallest portion of the same, is to be considered the highest bidder, and when such portion constitutes a half, or more, of the parcel, it is to be taken from the east side thereof, dividing it by a line running north and south, except that town lots are to be divided, in such case, lengthwise by a line parallel with the proper lines of the lots. If the portion taken be less than one half of the parcel, it is to be taken from the south-east corner, in a square form, as nearly as the form of the land will conveniently permit. The preceding provisions of this section are subject to the following qualifications: The homestead is liable to be sold for no tax save that which is due upon itself exclusively, and the above directions concerning the division of a tract of land, shall be modified so as to meet this requirement; and to that end, the quantity of land bid may be obtained by drawing the division line in any direction or form, so as to avoid the homestead, and when the homestead constitutes a part of the tract or parcel sold, and is not yet ascertained, the court may in the action hereafter authorized, at the suggestion of either party, cause proceedings to be had similar to that required in relation to mechanics' liens, for the ascertainment of the homestead; and in all other cases of such sales, it may take the requi-

site order and proceedings to ascertain the land sold, and to set it apart from the homestead.

§ 47. Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed, and if it has closed, he may again advertise it specially and by description, by one written or printed notice, posted for two weeks on the court house door, after which it may be sold at public sale; or the treasurer may recover the amount bid by civil action, brought in the name of the county in which the sale was held.

§ 48. On or before the first Monday of June following the sale of real property, the treasurer is required to file in the office of the county clerk of his county a return of his sale of lands (retaining a copy in his office), showing the lands sold, the names of the owners, so far as known, the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale, with a certificate of the advertisement, verified by an affidavit, and such certificate shall be evidence of the regularity of the proceedings.

§ 49. The purchaser of land sold by the county treasurer for taxes due on the same, will be entitled to a deed for the land as purchased by him, upon the payment of the proper amount; which deed shall run in the name of the Territory of Nebraska, and be signed by the treasurer, in his official capacity, and will convey the title to the land so deeded, and will be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pays any taxes levied on the same, he shall have the same lien for them, and may add them to the amount paid by him in the purchase.

§ 50. The treasurer is authorized to demand fifty cents for each deed made by him on such sales, together with the fee of the notary public, or other officer acknowledging the same; but any number of parcels of land bought by any one person, may be included in one deed, as may be desired by the purchaser.

§ 51. Land so sold will be subject to redemption as follows: if redeemed before suit be commenced as hereafter provided, by paying the amount paid by the purchaser, including the fees for the deed, and any taxes on the land paid by the purchaser, and fifty per centum per annum thereon; and if redeemed after suit is commenced, by paying in addition to the foregoing the sum of ten dollars and the costs of suit, to be taxed by the clerk of the court in which said action is brought, such payment to be made to the purchaser, his agent or attorney, or the treasurer, who is to enter a memorandum of the redemption in the list of sales, and give a certificate thereof to the person redeeming the same, and hold the money paid (except the costs of suit) to the order of the purchaser.

§ 52. The purchaser may at any time after six months from the day of the sale file his petition in the district court, as in case of a foreclosure of a mortgage (except that no sale shall be decreed), in which action the notice to the party, and the service are to be the same as in case of a mortgage; but the owner shall not be entitled to defend, unless he has paid or tendered the amount above directed, or shows

that no tax was levied on the land, or that he had paid the taxes, or that it was not subject to taxation.

§ 53. When the owner of the land is not known, the action may be brought against the land itself, but in such case of a non-resident, and when such action is commenced against a person who disclaims the ownership of the land, the land itself may be substituted for the defendant, and the action continued for publication.

§ 54. The court shall have jurisdiction of such actions as in chancery, and the decree therein shall be conclusive in the same degree as in other actions.

§ 55. When by the mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, the county is to hold the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable for the amount to the county on his bond; or the purchaser may recover directly from the treasurer.

§ 56. A tax for territorial purposes shall be levied upon each peddler of watches, clocks, jewelry, or patent medicines, and all other wares and merchandize not manufactured within the limits of this territory, for a license to peddle throughout the territory for one year, the sum of thirty dollars.

§ 57. Such license may be obtained from the county clerk of any county, upon paying the proper tax to the treasurer thereof, and taking his receipt therefor.

§ 58. Any person so peddling without a license is guilty of a misdemeanor, and the person actually peddling is liable whether he be the owner or not, and upon conviction thereof, shall forfeit and pay the sum of fifty dollars to the county treasurer where such conviction shall be had, to be recovered by civil action in the name of the county prosecuting for the same. All fines and penalties recovered under this section shall be applied to the common school fund of the county prosecuting for the same, and if any peddler refusing to exhibit his license to any person requiring a view of the same, he shall be presumed to have none, and if he produce a license upon trial, such peddler shall pay all costs of prosecution.

§ 59. The treasurer of each county shall pay into the territorial treasury all funds in his hands belonging thereto annually, namely, on or before the first Monday of January next following the levy of the taxes, and the funds so paid in shall be the identical territorial warrants if any, received by the treasurer for payment of the taxes, or in the coin of the United States, and the county treasurer shall be entitled to receive ten cents a mile for travel each way by the nearest route in making his returns to the territorial treasurer, which he may receive either by a credit on his account, or on an order of the auditor from the territorial treasury.

§ 60. The county treasurer shall settle with the county commissioners on the third Monday of January of each year, being charged with the tax lists of the preceding year, or years, and credited with moneys collected and paid out, and the delinquent lists of the current year, and he shall leave his vouchers with the commissioners, to be retained by them for evidence of his settlement. If the treasurer's accounts are

correct the commissioners shall certify to the same, if not he shall be liable on his bond.

§ 61. A list of lands becoming taxable for the first time in each county of the territory, shall be procured by the territorial auditor from the proper land offices, at the best prices for the territory, and a list of the lands becoming so taxable in each of the several counties, shall be forwarded to the county clerk of each county, on or before the first day of February of each year.

§ 62. That in executing the provisions of this act, the following compensation shall be allowed and paid out of the territorial or county treasury, as the case may be, on the order of the auditor or county clerk, the following fees, and no others:

To each member of the board of equalization, when sitting for the county, three dollars a day, payable from the county treasury on the order of the county clerk.

To the county assessor, fifteen cents on each separate list of lands, or personal property, or both, valued and returned to the county clerk as required by the provisions of this act, and an additional sum of ten dollars for the arranging of the list as directed for the county clerk; which sums shall be paid from the county treasury upon the order and estimate of the county clerk.

To the county clerk for each day he may be employed in preparing the abstract of the assessors' roll for the territorial auditor, the sum of three dollars, and for each day he may be employed in preparing the tax list and duplicate as required by this act, the sum of three dollars, which sum shall be paid from the county treasury, on an account kept by himself, and allowed by the county commissioners, and on an order for the amount found to be due him, drawn by said commissioners on the county treasurer of each county. The county treasurer shall be allowed ten per centum on all moneys and warrants received into the treasury, to the amount of three thousand dollars and under, five per cent on the amount over three thousand dollars, and under five thousand dollars, and two and a half per cent on the amount over five thousand dollars, and an additional sum of ten per centum shall be allowed on all moneys collected by distress and sale of personal property, and the advertising and sale of lands in case of distress, and sale of personal property he shall be entitled to reasonable charges for keeping the property until the day of sale, and a fee of one dollar for advertising and sale together with five cents per mile both ways for the distance traveled in making distress of goods, which amounts shall be deducted from the amount of the sales, and if the property distrained and sold shall not be sufficient to cover the amount of taxes and costs, the taxes are to be first taken from the amount, and the balance shall belong to the treasurer.

The county treasurer shall be allowed mileage at the rate of ten cents per mile going to and returning from the capitol, for the purpose of making his annual settlement with the territorial treasurer, which sum shall be paid out of the territorial treasury on the order of the territorial auditor.

§ 63. All acts or parts of acts inconsistent with this act, are hereby repealed.

§ 64. This act to be in force from and after its passage.

SYSTEM OF REVENUE.

1. The current year commences on the first day of February, and closes with the last day of January succeeding.

2. On or before *first day of February*, the commissioners to furnish assessor with suitable notices and blank forms for the assessment, Sec. 4.

3. The assessor shall distribute the same, on or before the first day of March, Sec. 5.

4. Lists to be made and returned by the 20th March, Sec. 5.

5. The assessors' roll to be made out and delivered to the county clerk, on or before the second Monday of April, Sec. 24.

6. County clerk's abstract of the assessment roll to be sent to auditor by first Monday of May ensuing, Sec. 25.

7. Territorial board of equalization to meet the second Monday of May, Sec. 26.

8. Auditor to notify county clerk of changes in valuation and territorial levy, by first Monday of June, Sec. 28.

9. County board of equalization to commence its session second Monday of June, Sec. 29.

10. Commissioners levy tax the first Monday of July, Sec. 30.

11. County clerk to prepare tax list and duplicate, and deliver the duplicate to the county treasurer, on or before the first Monday of September, Sec. 31.

12. County treasurer the collector of taxes, Sec. 34.

13. Taxes become delinquent after November 1st, Sec. 40.

14. Notice of sale of lands, first week in April, Sec. 46.

15. Sale of lands first Monday of May, Sec. 45.

16. Return of sales made by treasurer to county clerk, the first Monday of June, Sec. 49.

17. Other territorial taxes, Sec. 57.

18. Treasurer of county to settle with territorial treasurer, 1st Monday of January, Sec. 60.

19. County treasurer to settle with county commissioners third Monday of January.

SYNOPSIS OF BILL.

1. Property exempt from taxation, Sec. 1, under nine heads.

2. Property subject to taxation; Secs. 2, 3.

The listing and assessment.

1. Commissioners furnish notices and blanks, Secs. 4, 7.

2. Assessors' duties, Secs. 5, 6, 8, 9, 10, 11, 12.

3. Property by whom listed, Secs. 13, 14, 15, 16, 17, 18, 19.

4. Instructions for listing, Secs. 20, 21, 22, 23, 24.

5. Assessors' roll, Sec. 25.

6. Clerk's abstract sent to auditor, Sec. 26.

7. Territorial board of equalization, Secs. 27, 28.

8. Auditor to notify county clerk of charges and amount of tax Sec. 29.

9. County board of equalization, Sec. 30.

10. Commissioners levy taxes, Sec. 31.

11. County clerk prepare tax list and duplicate, Secs. 32, 33.
 12. County treasurer and collecting the taxes, Secs. 34, 35, 36, 37, 38, 39.
 13. Taxes become delinquent, Sec. 40.
 14. Distress advertisements and sale, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54; 55, 56.
 15. Peddlers' taxes; Secs. 57, 58, 59.
 16. Treasurer of county to settle with treasurer of territory, Sec. 60.
 17. Treasurer of county to settle with commissioners, Sec. 61.
 18. Fees of revenue officers, Sec. 62.
 19. Repealing clause, Sec. 63.
 - Act to take effect when, Sec. 64.
 - Approved Nov. 1, 1858.
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AN ACT

To Require Justices of the Peace to give Bond before Entering upon the Discharge of their Official Duties.

§ 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all justices of the peace hereafter elected or appointed in this territory, shall, before they enter upon the discharge of their official duties, give a bond, with sureties, to the county in which they are elected or appointed, conditioned for the faithful performance of their official duties. The sum in which the said bond is to be given shall be fixed by the county commissioners, and shall be approved by them, as in other cases of official bonds.

§ 2. After the bond shall have been approved by the county commissioners as specified in the preceding section of this act, it shall be filed in the office of the county clerk of the proper county, and shall be for the use of all persons aggrieved by reason of the neglect or refusal of the justice to pay over, on demand, money received by him in his official capacity, or for injury or damage sustained in consequence of any malfeasance in office of any justice of the peace, elected or appointed as specified in the preceding section of this act.

§ 3. Any person or persons feeling aggrieved at the official misconduct of any justice of the peace, as specified in the preceding section, may commence and prosecute a suit, upon the official bond, in any court of competent jurisdiction. Justices of the peace shall have jurisdiction of suits brought on such bonds, when the sum demanded shall not exceed one hundred dollars.

§ 4. This act to take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Fix the Times of Holding the District Court in the Second Judicial District.

§ 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the times for holding the district courts of the second judicial district shall be as follows: In the county of Johnson, on the first Monday of April and on the first Monday of September in each year. In the county of Pawnee, on the first Thursday of April, and on the first Thursday of September in each year. In the county of Richardson, on the second Monday of April, and on the second Monday of September in each year. In Nemaha county, on the third Monday of April, and on the third Monday of September in each year. Provided, that the November term of the court for the said county of Nemaha, shall be held on the third Tuesday of November, 1858, as now provided by law. In the county of Otoe, on the first Monday of March, and the first Monday of August, and on the first Monday in December of each year. Provided, that the December term of the court for said county of Otoe, shall be held on the first Tuesday of December, 1858, as now provided by law. And in the other counties of said district at such times as the judge thereof may in his discretion appoint.

§ 2. All suits now pending in Richardson county district court and all suits commenced therein when the petition shall have been filed, and the summons served on the defendant two days previous to the first day of the term of said court as fixed in section one of this act, including all appeals from the judgments of justices of the peace and probate judges, shall be tried at the first term of the said court as fixed in the preceding section of this act, and the provisions of the act of the legislative assembly entitled "an act to amend chapter second of the laws of 1857, relative to district courts," approved the fourteenth day of October, 1858, so far as the same relates to said county of Richardson shall not operate on suits now pending, or to be commenced in the said Richardson county district court at the first session thereof, but shall be tried and disposed of as though the said act had never been passed.

§ 3. This act to be in force from and after its passage.

* Approved November 1st, 1858.

AN ACT

To Authorize certain Officers to Administer Oaths and Affirmations in all Cases.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That oaths and affirmations may be administered in all cases whatsoever, by judges of the supreme court, judges of the district courts, clerks of the supreme courts, clerks of the district courts within their respective districts, and by probate judges, justices of the peace, and notaries public, within their respective counties.

§ 2. This act shall take effect and be in force from and after its passage.
Approved November 1, 1858.

AN ACT Respecting Juries.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* All free white males residing in any of the counties of this territory, having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense, punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries, within their counties respectively: Provided, that persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practising physicians, postmasters, and carriers of the United States mails, shall not be compelled to serve as jurors.

§ 2. In each of the counties of this territory, wherein a district court is appointed or directed to be holden, the county commissioners of the county shall, at least fifteen days before the first day of the session of the court, meet together or any two of them may meet and select sixty persons possessing the qualifications prescribed in section one, and as nearly as may be, a proportionate number from each precinct in the county, and shall, within five days thereafter, furnish to the clerk of the district court of the county, or his deputy, a list of the names of the persons selected.

§ 3. The clerk or deputy clerk receiving the names, shall write the name of each person selected on a separate ticket, and place the whole number of tickets into a box, or other suitable and safe receptacle, and shall preserve the list of names furnished by the commissioners, in the files of his office.

§ 4. The clerk of the district court or his deputy, and the sheriff, or if there is no sheriff the deputy sheriff, or if there is no deputy sheriff, or if there is no sheriff or deputy sheriff, the coroner of the county, shall, at least ten days before the first day of the session of the district court, meet together and draw by lot out of the box or receptacle, wherein shall be kept the tickets aforesaid, sixteen names, and the persons whose names are drawn shall be grand jurors; and the clerk and sheriff shall then draw twelve additional names, and the persons whose names are drawn shall be the petit jurors.

§ 5. The clerk shall, on the day of the drawing aforementioned, issue an order to the sheriff, deputy sheriff, or coroner, as the case may be,

commanding him to summon the persons whose names are drawn, to appear before the district court, at or before the hour of eleven o'clock, on the morning of the first day of the term (stating in the order, the day of the week and month, and the place of the sitting of the court), to serve as grand jurors, and a like order commanding the sheriff, deputy sheriff or coroner to summon the petit jurors.

§ 6. The sheriff, deputy sheriff or coroner having received the order, shall, at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as grand juror, a true copy of the command, except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror; and the sheriff, deputy sheriff or coroner, shall, at least five days before the first day of the session of the court, in like manner summon each person whose name was selected and drawn as petit juror; and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving the copy at his residence.

§ 7. Each grand juror and petit juror summoned, shall appear before the court on the day and at the hour specified in the summons, and shall not depart without leave of court.

§ 8. If all the persons summoned as grand and petit jurors do not appear before the court, or if by any cause the panel of grand jurors or petit jurors is not complete, the court may order the sheriff, deputy sheriff or coroner, to summon without delay, good and lawful men having the qualifications of juror, and the person summoned shall forthwith appear before the court, and if competent, shall serve on the grand jury or the petit jury, as the case may be, unless such person may be excused from serving, or lawfully challenged.

§ 9. It shall be the duty of the county commissioners, in selecting and furnishing to the clerk the names of persons qualified to serve as grand or petit jurors, so to select and arrange that no one person shall serve on the jury a second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained.

§ 10. The sheriff, deputy sheriff or coroner, having received the order or service issued by the clerk, shall make return thereof with his proceedings, to the clerk, before the session of the court.

§ 11. If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five nor more than fifty dollars, and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail, and if the county commissioners of any county neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five nor more than fifty dollars, and if any clerk of the district court, or deputy clerk or sheriff, deputy sheriff or coroner, neglects or fails to perform the duties imposed by this act, the person so offending shall be considered guilty of contempt of court, and may be fined by the court, not

less than five nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

§ 12. Chapter six, of an act entitled, "An act respecting practice and proceedings in courts of justice and for other purposes," approved February 13th, 1857, is and all acts and parts of acts, inconsistent with this act are hereby repealed.

§ 13. This act shall take effect and be in force from and after its passage.

Approved November 2, 1858.

AN ACT

To Legalize the Acts of certain Commissioners of Deeds and for other purposes,

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the acts of all commissioners of deeds in foreign states and territories, or in the District of Columbia, heretofore appointed by the governor of this territory when two or more have been appointed in the same city or town, be and the same are hereby declared legal, as much so as if only one commissioner had been appointed in such city or town, as provided in section (41) chapter (31) of the code of Nebraska, approved January 26, 1856.

§ 2. The said section (41) chapter (31) of the code of Nebraska, is hereby amended, as to read as follows: "The governor of this territory may commission so many commissioners, in such of the states and territories of the United States, or in the District of Columbia, as he may deem expedient, who shall continue in office four years, and shall have authority to take acknowledgments and proof of the execution of any instrument in writing, conveying real estate, or any interest therein, or affecting the same, lying in this territory, or any assignment, transfer, power of attorney, satisfaction of a judgment, or of a mortgage, or any other writing to be used or recorded in this territory, also to administer an oath or affirmation to any person who may desire it."

§ 3: This act to be in full force from and after its passage.

Approved November 3, 1858.

AN ACT

To Apportion the Members of the House of Representatives of the Territory of Nebraska:

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That hereafter the house of representatives of the territory of Nebraska shall be composed of thirty-nine members, to be apportioned among the several counties as follows:

Richardson county, three members.

Nemaha county, four members.

Otoe county, six members.

Cass and Lancaster counties, five members.

Sarpy county, three members.

Douglas county, six members.

Washington county, two members.

Burt and Cuming counties, one member.

Dakota county, two members.

Dixon, Cedar, and L'Eau qui Court counties jointly, one member.

Dodge county, one member.

Platte, Green, Calhoun and Butler counties, one member.

Monroe and Hall counties, one member.

Pawnee county, one member.

Johnson, Clay and Gage counties jointly, one member.

§ 2. All acts and parts of acts, conflicting with this act, are hereby repealed.

§ 3. This act to take effect, and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

Regulating Ferries.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That no person shall be permitted to keep a ferry across any stream running through or bounding on any county in this territory without having first obtained license from the board of county commissioners of the proper county for that purpose, as hereinafter provided.

§ 2. That the person applying for such license shall produce satisfactory evidence to the board of county commissioners, by the affidavit of the applicant or otherwise, of his having given notice by advertisement, set up in at least three public places in the precinct, or neighborhood where the ferry is proposed to be kept, twenty days prior to the sitting of the commissioners' court, of his intention to apply to such board of commissioners at their next regular term for such license to keep such ferry.

§ 3. That the board of county commissioners being satisfied, that the notice hereby required has been given, that a ferry is needed at said place, and that the applicant is a suitable person to keep the same, are hereby authorized to grant to the applicant a license to keep the same for the term of not less than one nor more than ten years, on the applicant's paying into the county treasury, of the proper county, a sum to be fixed by the board of county commissioners, not less than two dollars nor more than five hundred dollars annually, and on the applicant's producing the county treasurer's receipt for the sum so fixed, he or she shall receive from the clerk of the said board of county commissioners, a

license under the seal of said clerk, for which he or she shall pay the clerk the sum of fifty cents.

§ 4. That the person owning or possessing land on both sides of any stream, when a ferry is proposed to be established, shall have exclusive right to a license for a ferry at such place, and when the opposite banks are owned by different persons, the right to the ferry shall be mutual, but if the owner does not apply to the board of commissioners, the board shall grant a license to any person applying for the same, except where either of the landings are not on a public highway, in which case the consent of the owner of the ground shall first be had in writing; provided, that nothing herein contained shall be so construed, as to prevent any person from ferrying persons across a small stream in high water. And the board of county commissioners are hereby authorized to direct the county clerk to give any person a permit for that purpose, when in their opinion the stream is too small to justify the expense of a license; and provided also, when any person shall apply for a renewal of his license, at the same place where he kept a ferry the preceding year, the same may be granted or renewed without notice or petition.

§ 5. That when a license shall expire in vacation, and the person who obtained the same shall procure a renewal, the latter license shall include the time from the expiration of the former, as well as the time to which it shall extend in future, and the applicant shall pay a rateable proportion for the whole time therein mentioned, and shall thereupon be exonerated from any penalty to which he would be otherwise liable. Provided, however, that in all applications for a license, the board of commissioners may grant or refuse the same at their discretion.

§ 6. That every person obtaining a license to keep a ferry, shall provide and keep in good repair, a good and sufficient boat, for the safe conveyance of persons and property, and when the river or creek over which the ferry is kept is passable, shall with a sufficient number of hands to work and manage the boat, give due attendance from daylight in the morning until dark in the evening; and shall, moreover, at any hour in the night or day that the creek or river can be passed, when called upon for that purpose, convey the United States mail or other public express across said ferry; and if any person having obtained a license as aforesaid, shall fail or neglect to perform the duties herein enjoined, or any of them, the person so offending shall forfeit and pay for every such offense, a sum not exceeding five dollars, to be recovered before any justice of the peace of the proper county, at the suit of any person prosecuting for and making due proof of such failure or neglect; and if any keeper of a ferry as aforesaid, shall demand and receive a higher rate or sum for ferriages than shall be allowed by the board of county commissioners of the county wherein such ferry is kept, the person so offending shall forfeit and pay for every such offense, a fine not exceeding ten dollars, recoverable before any justice of the peace of the proper county, by any person making due proof thereof, to be disposed of as hereinafter provided.

§ 7. That should the county commissioners refuse to renew the license of any ferryman, he shall be exonerated from the penalties of this act, by paying into the county treasury previous to any prosecution having

been commenced against him, such sum for the time which may have elapsed between the expiration of his license and the next term of the court of county commissioners, as shall bear a ratable proportion to the amount charged for the previous year.

§ 8. That the board of county commissioners at the same time they grant a license to keep a ferry shall also fix the rate of ferriages which the ferry keeper may demand and receive for the transportation of persons and property, and it shall be the duty of the clerk of the board of said county commissioners to furnish every person taking out a license to keep a ferry, with a list of the rate of ferriages, which list the ferry keeper shall post up at the door of his ferry house, or some conspicuous place convenient to said ferry.

§ 9. That every county clerk shall on the first day of the term of the district court deliver to the grand jury an accurate list of all persons holding license within his county, and it shall be the duty of the judge to give this act in charge to the grand jury, whose duty it shall be to make inquiry and give information of any violation thereof, except in cases where jurisdiction is given to justices of the peace.

§ 10. That if any person shall keep a ferry without being duly authorized, the person so offending shall forfeit and pay a sum not exceeding fifty dollars, to be recovered by indictment.

§ 11. That if any justice of the peace or other officers shall neglect or fail to comply with the requisitions of this act, the person so offending shall forfeit and pay for every such offence a sum not exceeding fifty dollars, at the discretion of any court of competent jurisdiction, before whom the same may be recovered for the use of the county.

§ 12. That all actions or suits brought under the provisions of this act, shall be in the name of the territory of Nebraska, and the court taking cognizance thereof shall keep a record of all fines and forfeitures recovered under the same, and sheriffs, constables, and other officers shall pay all moneys within thirty days after receiving the same, into the county treasury, and the justices of the peace, and clerks of courts, before whom any fine is recovered, shall present an accurate account thereof to the county clerk on or before the first Monday of July annually, and it shall be the duty of the county clerk to inform and prosecute all offenders against this statute, especially such offences as are cognizable before justices of the peace.

§ 13. Nothing herein contained shall be construed as to conflict or interfere with any vested right, heretofore acquired, or secured, under any law of this territory.

§ 14. This act to take effect and be in force from and after the 31st day of December, 1858.

Approved November 3, 1858.

AN ACT

For the Appointment of Masters in Chancery.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the district courts in each of the districts of this territory respectively shall appoint some person residing in each of the organized counties of said district, as a master in chancery, for said counties respectively, who shall hold their offices for three years from the time of their appointment, and shall keep their offices at the county seat.

§ 2. Said masters in chancery shall be sworn to faithful performance of the duties of their office, and shall have the power to perform the ordinary duties of masters in chancery, together with the duties of a judge of the district court of chancery in vacation.

§ 3. Masters in chancery shall have the following fees for their services, to wit: for copying or writing every one hundred words, fifteen cents; for swearing each witness, ten cents; for each certificate, fifty cents, and shall be allowed such other fees for their services, as the district court shall allow to be paid for at the time, by the party requiring the services, and to be taxed in the bill of costs.

§ 4. This act to take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To amend An Act entitled "An Act for the Appointment of Masters in Chancery."

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* Section first of the act entitled "an act for the appointment of masters in chancery" be so amended as to authorize the appointment of two masters in chancery in and for the counties of Otoe and Douglas.

Approved November 4, 1858.

AN ACT

To Authorize the County Commissioners to pay Interest on County Orders:

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all county orders, heretofore drawn, or may hereafter be drawn, by the proper authorities of any county, shall after having been presented to the county treasurer of the respective counties, and by him endorsed "not paid for want of funds in the treasury," from said date shall draw interest at the rate of ten per cent per annum.

§ 2. This act to take effect and be in force from and after its passage.
Approved November 4, 1858.

AN ACT

Authorizing the Judges of the District Courts to Provide Rules
Regulating the Proceedings in Chancery.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the judges of district courts shall establish rules to regulate proceedings and remedies in chancery.

§ 2. That all acts and parts of acts inconsistent with this act be repealed.

Approved November 4, 1858.

AN ACT

To require County Clerk to give Bond.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county clerk of each county shall give bond for the faithful and impartial discharge of his official duties, in the sum of three thousand dollars, which shall be approved by the board of county commissioners.

§ 2. This act shall be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To License and Regulate the sale of Malt, Spiritous and Vinous
Liquors in the Territory of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county commissioners of any county in this territory may, at any regular session of said body of commissioners, grant and issue a license for the sale of malt, spirituous and vinous liquors, to any person or persons, who shall comply with the following conditions:

1st. The applicant for a license under this act, shall file with the county clerk the petition of at least ten freeholders of the township in which he resides, signed and attested before a justice of the peace or other competent officer, setting forth that the applicant for a license is a man of respectable character and standing, and a resident of this territory, and praying that license may issue to him.

2d. The applicant shall at the same time file with the county clerk his bond to the county in the sum of not less than five hundred dollars,

nor more than five thousand dollars, with good and sufficient security, to be approved by the county commissioners, conditioned, that during the continuance of his license, he will not keep a disorderly house; that he will not allow gambling with cards, dice, or any other implements or devices used in gambling, within his house, or within any out house, yard or other premises under his control; for the payment of all damages, fines and forfeitures which may be adjudged against him under the provisions of this act.

3d. The applicant shall pay into the county treasury, for the use of the school fund, to be distributed as other monies, the sum of not less than twenty-five dollars, nor more than five hundred dollars, at the discretion of the county commissioners, and file the treasurer's receipt thereof in duplicate with the county clerk, before such license shall be issued.

§ 2. No license shall be issued for a longer period than one year, nor for a less period than six months, and shall specify particularly the place where the person obtaining a license under this act intends selling liquor during the continuance of said license, which said license shall be in the following form, as near as can be, making changes to suit each case:

Territory of Nebraska, county of

To all who shall see these presents. Know ye, that having on the day of , A. D. 185 , filed his petition and bond according to law, and paid into the county treasury the tax imposed on him as a vender of malt, spiritous and vinous liquors, therefore the said , is hereby authorized to vend said liquors at (here describe particularly the location of the place), for months, ending the day of next.

In testimony whereof, I, , clerk of the county of , have affixed the seal of said county, this day of , A. D. 185 .
County Clerk.

§ 3. Any person licensed as before provided, who shall give or sell any malt, spiritous or vinous liquors, or other intoxicating drink, to any minor, apprentice or servant, under twenty-one years of age, without the consent of the parents, guardian or master thereof, shall forfeit and pay for each offence, the sum of twenty-five dollars, for the use of the school fund, to be applied as provided for in section one of this act, recovered by civil action, before any court having competent jurisdiction, upon the complaint of any person who will file with a justice of the peace, within the county, a statement in substance as follows:

“Mutatis Mutandis.”

A. B.

Dr.

To the Territory of Nebraska.

For the violation of the third section of an act to license and regulate the sale of malt, spiritous and vinous liquors, \$25; and on proof of the violation of said section, or any part thereof, the justice shall render judgment for the whole amount of fine and costs, and be committed to the common jail until the sum is paid.

§ 4. Any person or persons so licensed, who shall sell any intoxicating liquor to an Indian, insane person, or idiot, shall be subject to a fine of not less than fifty dollars for every such offence, which said fine shall be paid into the school fund, and distributed as herein before provided, to be sued for and collected, before any court of competent jurisdiction, as prescribed in the previous section of this act.

§ 5. The person or persons so licensed, shall pay all damages that the community or individuals may sustain in consequence of such traffic; he shall support all paupers, widows and orphans, and the expense of all civil and criminal prosecutions growing out of or justly attributable to his retail traffic in intoxicating drinks; said damages and expenses to be recovered in any court of competent jurisdiction by any civil action in the bond named and required in the first section of this act, a copy of which property, authenticated, shall be taken in evidence in any court of justice in this territory; and it shall be the duty of the county clerk to deliver, on demand, such a copy thereof to any person who may claim to be injured by such traffic.

§ 6. It shall be lawful for any married woman or other persons, at her request, to institute and maintain, in her own name, a suit on any such bond for all damages sustained by herself and children on account of such traffic, and the money when collected shall be paid over for the use of herself and children.

§ 7. When any person shall become a county or city charge by reason of intemperance, a suit may be instituted by the proper authorities, on the bond of any person licensed under this act, who may have been in the habit of selling or giving intoxicating liquor to the person so becoming a public charge. Provided, that the person against whom a judgment may be rendered under the provisions of this act, may recover by a similar action a proportionate part of said judgment from any or all persons engaged in said traffic, who have sold or given liquor to such person becoming a public charge, or to any person committing an offense.

§ 8. On the trial of any suit under the provisions of this act, the cause or foundation of which shall be the acts or injuries of a person or persons, under the influence of liquor, it shall only be necessary to sustain the action, to prove that the defendant or defendants sold or gave liquor to the person or persons so intoxicated, or under the influence of liquor, whose acts or injuries are complained of, on that day, or about that time, when said acts were committed or said injuries received, and in action for damages brought by a married woman, or other person whose support legally devolves upon a person disqualified by intemperance from earning the same, it shall only be necessary to prove that the defendant has given, or sold intoxicating drinks to such person in quantities sufficient to produce intoxication, or when under the influence of liquor.

§ 9. No suit for liquor bills when sold in less quantities than five gallons, shall be entertained by any court in this territory, and when it shall be made to appear that any promissory note, mortgage, or other obligation upon which a suit is pending, was given for liquor sold in less quantities than five gallons, such suit shall be dismissed at the cost

of the plaintiff, except such sales be for medical, mechanical or sacramental purposes.

§ 10. All persons who shall vend or retail or for the purpose of avoiding the provisions of this act, give away upon any pretext, malt, spiritous or vinous liquors, or any intoxicating drink, without first having complied with the conditions and obtained license as set forth in this act, shall for each offense be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars, nor more than one thousand dollars, or be imprisoned not exceeding one year in the county jail, or be both fined and imprisoned, and shall be liable in all respects to the public and to individuals, the same as he would have been had he given bonds and obtained license as herein provided.

§ 11. It is hereby made the duty of the justice of the peace, and all other competent courts in this territory, upon the filing of complaint under oath, when any person within the jurisdiction of said court is guilty of a violation of any of the provisions of this act, to issue a warrant forthwith for the arrest of such person complained of, as in other cases of misdemeanor, and it shall be the duty of the sheriff, constable, or ministerial officer of corporate towns, or cities, in their proper counties, and of the district attorneys in their respective districts, to give information under oath or affidavit to any justice of the peace, of the violation of any of the provisions of this act, and it shall be the duty of said justice thereupon to issue a warrant directed to any constable or sheriff of the county, and thereby cause the offender to be arrested and brought before himself or some other justice of the peace, and if upon examination the justice shall have reason to believe the party guilty, he shall be held to answer at the next term of the district court, as in other cases of misdemeanor.

§ 12. All suits for damages or expenses arising under this act, may be commenced and prosecuted before a justice of the peace, when the damages claimed do not exceed one hundred dollars, although the penalty in the bond may exceed that amount, and the judgment shall be for the damages proved.

§ 13. When any person licensed under this act shall be convicted for any violation of its provisions, or when judgment for damages or expenses as herein provided, rendered against any person licensed, it shall be the duty of the court so convicting or rendering judgment, to transmit forthwith to the county commissioners a certified copy of said conviction or judgment, with a statement of evidence in the case, for which he shall be allowed a fee of one dollar, to be assessed with the costs.

§ 14. Upon receipt of the certified copy and statement mentioned in the preceding section, the county commissioners shall cite the party to appear and show cause why his license shall not be declared forfeited, and may in their discretion revoke and annul said license. No person whose license has been declared forfeited shall be eligible to receive license within five years from the date of such forfeiture.

§ 15. All the powers and duties in this act devolving upon the county commissioners, shall belong to and be exercised exclusively by the proper authorities of any or all incorporated towns or cities of this

territory, within the incorporated limits thereof, and the authorities of such towns and cities are hereby empowered to make all needful rules, and pass all necessary ordinances, decrees or orders to carry out the intent of this act. They may determine what municipal officer shall receive the petition, file the bond and receipt, and issue the license as in the first section of this act required: Provided, however, that such incorporated cities and towns may require such additional sum to be paid for license under this act as to them may seem best, not to exceed one thousand dollars, which sum, together with the sum herein required to be paid to the county treasurer, may be paid to the treasurer of the town or city, who shall account for the same, and his receipt therefor shall be equivalent to the receipt of the treasurer of the county for all the purposes named in the first section of this act.

§ 16. All acts or parts of acts now in force coming in conflict with the provisions of this act are hereby repealed; except, "an act to prevent the use of intoxicating liquors among the indians or half breeds in this territory," approved January 26, 1856.

§ 17. This act to take effect and be in force from and after its passage. Approved November 4, 1858.

AN ACT

Making Certain Instruments of Writing Negotiable.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all bonds, promissory notes, bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or order or to any person or assigns, shall be negotiable, by endorsement thereon so as absolutely to transfer and vest the property thereof, in each and every endorsee successively, but nothing in this section shall be construed to make negotiable any such bond, note or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to order, bearer or assigns.

§ 2. That any endorsee to whom any such bond, note or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may in his own name, institute and maintain an action on such bond, note or bill for the recovery of the money due thereon, against the maker, drawer or obligor or against the endorsee, having first used due diligence to obtain the money of the drawer, maker or obligor.

§ 3. That all notes, bonds or bills, made negotiable by this act, shall be entitled to three days grace in the time of payment, and the demand of payment, from the maker, on the third day of grace or of acceptance, if the instrument is a sight draft, and notice of non-payment or non-acceptance thereof to the endorser, within a reasonable time, shall be adjudged due diligence under the provisions of this act, unless the endorsement shall express in writing other conditions.

§ 4. That if any such bond, note or bill of exchange, shall be endorsed after the day on which it is made payable, and the endorser shall institute an action thereon against the maker, drawer or obligor, the defendant shall be allowed to set up the same defence that he might have done, had the same action been instituted in the name and for the use of the person to whom the said note, bond or bill was originally made payable.

§ 5. That if any such bond, note or bill of exchange, shall be endorsee on or before the day on which the same is made payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial, any money actually paid on said bond, note or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of such payment, before such endorsement was made and accepted.

§ 6. That it shall be lawful for any person or persons having a right to demand any sum of money upon any protested bond, note or bill of exchange as aforesaid, to commence and prosecute an action, for principal, damages, interest, and charges of protest, against the drawers, makers or endorsers, jointly or severally, or against either of them separately. And judgment shall and may be given for such principal, damages, charges and interest upon such principal, after the rate aforesaid, to the time of such judgment, together with costs of suit.

§ 7. That when any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance and non-payment, the drawer or drawers, endorser or endorsers; shall be subject to the payment of twelve per centum damages thereon, if drawn upon any person or persons or body corporate, without the jurisdiction of the United States, and six per centum damages thereon, if drawn upon any persons or body corporate within the jurisdiction of the United States and without the jurisdiction of this territory, and the bills shall in all cases bear an interest of ten per centum, from the date of the protest, until the money therein drawn for shall be fully satisfied and paid.

§ 8. That the act providing for bonds, bills of exchange, &c., approved January 25th, 1856, and all acts and parts of acts conflicting with this act, shall be, and the same are, hereby repealed.

Approved November 4, 1858.

AN ACT

Securing the Benefits of the Writ of Habeas Corpus.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That if any person, except persons convicted of some crime or offense for which they stand committed, or persons committed for treason or felony, the punishment whereof is capital, plainly and specially expressed in the warrant of commitment, now is or shall be confined in any jail of this territory, or shall be unlawfully deprived of his or her liberty, and shall make application, either by him or her-

self, or by any person on his or her behalf, to any one of the judges of the district court, or to any probate judge, and does at the same time produce to such judge a copy of the commitment or cause of detention of such person, or if the person so imprisoned or detained is imprisoned or detained without any legal authority, upon making the same appear to such judge, by oath or affirmation, it shall be his duty, forthwith, to allow a writ of habeas corpus, which writ shall be issued forthwith by the clerk of the district court, or by the probate judge, as the case may require, under the seal of the court whereof the person allowing such writ is a judge, directed to the proper officer, person or persons, who detain such prisoner.

§ 2. That it shall be the duty of the officer or person to whom such writ shall be directed, to convey the person or persons so imprisoned or detained and named in such writ, before the judge allowing the same, or, in case of his absence or disability, before some other judge of the same court, on the day specified in said writ, and shall make due return of said writ, together with the day and cause of the caption and detention of such person, according to the command thereof.

§ 3. That when the said judge shall have examined into the cause of the caption and detention of the person so brought before him, and shall be satisfied that the person is unlawfully imprisoned or detained, he shall forthwith discharge such prisoner from said confinement. And in case the person or persons applying for such writ shall be confined or detained in a legal manner, on a charge of having committed any crime or offence, the said judge shall, at his discretion, commit, discharge or let to bail, such person or persons, and if the said judge shall deem the offense bailable, on the principles of law, he shall cause the person charged as aforesaid to enter into recognizance, with one or more sufficient securities, in such sum as the judge shall think reasonable, the circumstances of the prisoner and the nature of the offense charged, considered, conditioned for his appearance at the next court where the offense is cognizable; and said judge shall certify his proceedings, together with the recognizance, forthwith, to the proper court; and if the person or persons charged as aforesaid shall fail to enter into such recognizance, he or they shall be committed to prison by such judge.

§ 4. That if any person to whom such writ of habeas corpus shall be directed as aforesaid, shall neglect or refuse to obey or make return of the same according to the command thereof, or shall make a false return of said writ, or upon demand made by the prisoner or any person in his or her behalf, shall refuse to deliver to the person demanding within six hours after the demand thereof, a true copy of the warrant or commitment or detainer of such prisoner, every person so offending shall, for the first offense, forfeit to the party aggrieved the sum of two hundred dollars, and for the second offense the sum of four hundred dollars, and shall, if an officer, be incapable to hold his said office.

§ 5. That if any clerk of the district court shall refuse to issue such writ, after allowance and demand made as aforesaid, he shall forfeit to the party aggrieved the sum of five hundred dollars.

§ 6. That any person who shall be set at large upon any habeas cor

pus, shall not be again imprisoned for the same offense, unless by the legal order or process of the court wherein he or she shall be bound by recognizance to appear, or other court having jurisdiction of the cause or offense. And if any person shall knowingly, contrary to this act, recommit or imprison, or cause to be recommitted or imprisoned for the same offense or pretended offense, any person so set at large, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved five hundred dollars—any colorable pretence or variation in the warrant or commitment notwithstanding.

§ 7. That if any person of this territory shall be committed to prison or in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the territory for trial, or in case of fire, infliction or other necessity. And if any person after such commitment, shall make out or sign or countersign any warrant for such removal contrary to this act, he or she shall for every such offense, forfeit to the party aggrieved five hundred dollars.

§ 8. That when any person shall appear to be committed by any judge or justice, and charged accessory before the fact, to any felony, the punishment whereof is capital, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this act, or in any other manner than if this act had not passed.

§ 9. That no citizen of this territory, being an inhabitant or resident within the same, shall be sent a prisoner to any place whatever out of the territory, for any crime or offense committed within this territory, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to the intention of this act, and against any person who shall contrive, write, seal, sign or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same or any of them, and shall recover triple costs besides damages, which damages, so to be given, shall not be less than five hundred dollars, and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this act, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this territory. Provided, that if any citizen of this territory, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed any treason, felony or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she or they may be sent to the state or territory having jurisdiction of the offense.

§ 10. That the penalties in this act made recoverable, shall be recovered by the party aggrieved, his or her executors or administrators, by civil action in any court having cognizance of the same. Provided,

§ 12. That in case of confinement, imprisonment or detention by any person not a sheriff, deputy sheriff, coroner, jailer, constable or marshal of this territory, nor a marshal or other like officer of the courts of the United States, the writ of habeas corpus shall be in the form following:

§ 16. The person to be produced shall be designated, by his name,

known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

§ 17. In cases other than those provided for by the first section of this act, the person who makes the return shall state therein, and in the cases provided for in this act, the person in whose custody the prisoner shall be found, shall state in writing to the court or judge before whom the writ is returned, plainly and unequivocally:

1st. Whether he has or has not the party in his custody or power, or under restraint.

2d. If he has the party in his custody or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant or other process if any, upon which the party is detained; and

3d. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

§ 18. The return or statement shall be signed by the person making it, and it shall also be sworn to by him, unless he is a public officer, and shall make the return in his official capacity.

§ 19. That upon the return of any writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody, under any warrant or commitment in pursuance of law, the return shall be considered as prima facie evidence of the cause of detention, but if the person so imprisoned or detained, is restrained of liberty by any alleged private authority, the return of said writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts, and upon the final disposition of any case arising upon a writ of habeas corpus, the court or judge determining the same, shall make such order as to costs as the case may require.

§ 20. That when any writ of habeas corpus shall have been allowed, the court or judge to which the same shall be returned or into which it shall be adjourned, shall for good cause shown continue the said cause, and shall make order for the safe keeping of the person imprisoned or detain as the nature of the case may require.

§ 21. That the proceedings upon any writ of habeas corpus shall be recorded by the clerks and judges respectively, and may be reviewed and writs of error and certiorari (issue) as in other cases now provided by law.

§ 22. That the probate judges of the several counties of this territory shall be allowed the sum of two dollars for every allowance of the writ of habeas corpus, and the hearing and determining of the case upon the return of such writ, which sum together with the fees of the clerk, sheriff and witnesses in the case, shall be taxed by such probate judge on his return of his return of his proceedings on such writ, and the same when the person brought before such judge on such writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail or shall be remanded

to custody by such judge, shall be taxed and collected as part of the original cost in such case, but when such person shall be wholly discharged by such judge, such costs shall be taxed to the territory and paid out of the county treasury of the proper county upon the order of the court of county commissioners. Provided, that no person or officer shall have the right to demand the payment in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on habeas corpus, when such writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

§ 23. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Regulate the Entry and Disposal of Town Sites.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That when any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to private entry under the existing pre-emption laws, it shall be lawful and the duty whenever required by the occupants and owners by deed of the lots within the limits of the town as provided in section two of this act, for the corporate authorities of the town, if incorporated, and if not incorporated then for the county judge of the county wherein the town is situated, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust for the several use and benefit of the occupant thereof, and those holding by deed or otherwise, according to their respective interests.

§ 2. Whenever a petition signed by a majority of the occupants residing upon a town site, is presented to the corporate authorities of a town, if incorporated, or the county judge of the county in which the town is situated if the town is not incorporated, praying that the land settled upon and occupied as the town site be entered at the proper land office, it shall be the duty of the corporate authorities, or the county judge, as the case may be, without delay, to enter at the proper land office the land so settled upon and occupied, and hold the same in trust as hereinbefore provided.

§ 3. If at the time the petition is presented as provided for in section two, there is not in the treasury of the town, moneys sufficient to pay for the land settled upon and occupied, the corporate authorities or the county judge as the case may be, may levy and assess an equal proportional tax on the land so occupied, sufficient to pay for the said land and all costs of entering the same.

§ 4. After the entry of the land settled upon and occupied as a town site, as hereinbefore prescribed, the corporate authorities or the county judge, as the case may be, having entered the land, shall cause public notice to be given of the fact of such entry, by posting written o

printed notice in at least three public places in the town, and no deeds for the land or any part thereof, shall be executed and delivered within the period of thirty days after the first day of the publication of such notice.

§ 5. After the lapse of thirty days from the first day of the publication of such notice, the mayor of the town, or if there is no mayor the chairman of the board of trustees if such town is incorporated, and if the town is not incorporated then the county judge of the county wherein the town is situated, shall on demand execute and deliver to each person who may be legally entitled to the same, a deed in fee simple, for the part or parts, lot or lots of such land as the person demanding may be lawfully entitled to, on the payment by such person of his proportion of the purchase money of the land, together with his proportion of such sum as may be necessary to pay for streets, alleys, squares and public grounds, and all costs and expenses necessarily incurred in the entry of the land.

§ 6. When two or more persons claim title adversely to the same lot, lots or lands, within the boundaries of any town entered according to the provisions of this act, the party first claiming a deed shall serve a written notice upon the adverse party, stating therein that he claims title to the certain property, describing the same, and that he will, on the certain day specified in the notice, appear before the mayor, chairman of the board of trustees, or county judge of the county wherein the town is situated, as the case may be, to prove his right to claim and receive the title deed to the lot, lots or lands described in the notice; and if the adverse party is not a resident of the county wherein the town is situated, and can not be found therein, the first claimant shall publish the notice in a newspaper, printed in and published in the county, or if there is no such newspaper, then in a newspaper published in the territory of general circulation in that county, at least three weeks consecutively before the day specified for the appearance.

§ 7. The mayor, chairman of the board of trustees, or county judge, before whom any person is notified to appear, shall on the day specified in the notice, or on a convenient day within the period of thirty days after the day specified in the notice, hear the evidence of the adverse parties and determine all questions of title according to law and the evidence.

§ 8. Any person aggrieved by the determination of the mayor, chairman of the board of trustees, or county judge, shall, within five days after such decision, serve written notice on the mayor, chairman of the board of trustees, or county judge, and shall, within the period of forty days after the day on which the decision was rendered, file his petition in the district court of the territory in the county wherein the town is situated, setting forth his claim and title to the disputed property, against the making of the deed or title by the mayor, chairman of the board of trustees, or county judge, and the adverse claimant or claimants, stating therein the facts constituting his cause of complaint, and praying that the trust may be truly directed and enforced, and the petitioner may have other relief.

§ 9. The mayor, chairman of the board of trustees or county judge,

shall not execute or deliver a deed or deeds to either of the adverse claimants, until after the expiration of five days after the day of the determination as aforesaid; and if notice is served as provided in the next preceding section, the mayor, chairman of the board of trustees, or county judge, upon whom notice is served, shall not execute or deliver to either of the adverse claimants, a deed or deeds until after the expiration of forty days after the day of the decision as aforesaid; and if within the period of forty days after the day of the decision, the party who is aggrieved shall file his petition as provided in the preceding section, then the mayor, chairman of the board of trustees, or county judge, shall transmit all the papers and evidence in his possession, together with a transcript of his proceedings to the court wherein the petition is filed.

§ 10. If notice is not served on the mayor, chairman of the board of trustees, or county judge, as hereinbefore provided, within five days after the day of the decision, the mayor, chairman of the board of trustees, or county judge, shall, on demand in writing by the party adjudged to be entitled thereto, execute and deliver to such party, a deed in fee simple for the part or parts, lot or lots of such land, as the person demanding may be lawfully entitled to, as provided in section five of this act.

§ 11. At the expiration of six months after notice has been given, by publication, of the entry of any town site as provided in section four, the corporate authorities of such town, if incorporated, or the county judge of the county wherein such town is situated, if not incorporated shall cause all the lots, or parts of the land occupied as such town site not conveyed by deed as hereinbefore provided, and remaining vacant and unoccupied, to be advertised for sale by publication, three consecutive weeks in a newspaper published in the same county, or if there is no newspaper published in that county, then in a newspaper published in the territory of general circulation in that county, and by posting written or printed notice in at least three public places in such town and on the day advertised the mayor, or chairman of the board of trustees, if the town is incorporated, or the county judge if not incorporated, shall, by himself or his agent, offer and sell such lots, or part of such land separately, at public sale for money, and the highest bidder for each lot or part, shall be the purchaser, and each purchaser after paying the amount of his bid and the proportional cost of entering the land, may demand and receive a deed in fee simple for the lot or lots part or parts by him purchased, according to the provisions of section five. The proceeds of such sale, after the payment of the expenses shall be delivered to the treasurer of the town, or if there be no treasurer, shall be held by the officer receiving the same, as treasurer for the town, and shall be applied in the erection of public buildings, or in any other lawful manner, as a majority of the occupants residing in the town may direct.

§ 12. The mayor, chairman of the board of trustees, or county judge shall receive for a deed for one lot, one dollar, and no more, and for each additional lot included in a deed, ten cents, and no more, and shall include all the lots or parts to which each person is entitled in the same

deed, unless otherwise requested by the party entitled thereto; and the party receiving the deed shall pay the above fee, together with the lawful fee, to the officer acknowledging the same.

§ 13. The mayor, chairman of a board of trustees, and county judge, shall have power to administer oaths and affirmations in all trials under the provisions of this act, and shall have the same power to compel the attendance and examine witnesses as justices of the peace.

§ 14. All deeds heretofore executed and delivered to the lawful occupants and claimants by the chairman of the board of trustees of any town, under the provisions of an act entitled "incorporations of towns," approved January 25, 1856, are hereby legalized and confirmed.

§ 15. The act entitled an "act regulating the disposal of lands purchased in trust for town sites," approved February 10, 1857, and all acts inconsistent with the provisions of this act are hereby repealed.

§ 16. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Fix the Time for Convening the Legislative Assembly.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the next session of the legislative assembly shall be held on the first Monday in December, in the year eighteen hundred and fifty-nine; and said legislative assembly shall meet annually thereafter on the first Monday in December.

§ 2. All acts and parts of acts conflicting with this act, are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

Changing the Time for Convening the Legislative Assembly of the Territory of Nebraska, and for other purposes.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the regular session of the general assembly of the Territory of Nebraska, which was to have been held commencing on the first Monday in January, 1859, is hereby declared and made to commence on Monday, the fourth day of October, 1858.

§ 2. The officers of the council and house of representatives, elected at the extra session, convened by proclamation of the governor, and commenced on the 21st day of September, 1858, shall continue and be the officers of the regular session, and the unfinished business of the

council and house of representatives, done and transacted in the extra session, shall be acted upon and treated in the same manner, as if the same had been done and performed in the regular session.

§ 3. The regular session of the legislative assembly of this territory after the one named in the first section of this act, shall convene at the capitol on the first Monday in November, A. D. 1859, and on the same day annually thereafter.

§ 4. This act to take effect from and after its passage.

Approved October 2, 1858.

AN ACT

To Prevent Trespassing on Timber Lands.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That if any person knowingly or willfully enter on the land of another, and remove therefrom any timber or wood, or willfully injure any timber, tree or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard or town lot, or on the public ground of any town, or any land held by this territory for any purpose whatsoever, or any burying ground, or any school land shall be deemed guilty of a misdemeanor, and on conviction thereof before any justice of the peace, shall be fined not less than five dollars or more than one hundred dollars, one-half of said fine to be paid to the school fund, and the other half to the informer.

§ 2. Any person found guilty of a misdemeanor, as defined by section one of this act, and fined by any justice of the peace, shall be imprisoned in the county jail until such fine be paid.

§ 3. If upon the trial of any person arrested under the provisions of this act, the defendant shall demand a trial by jury, the justice of the peace before whom such trial is being had, may issue a venire and proceed to impanel a jury to try said cause.

§ 4. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

For the Encouragement and Protection of Live Fences.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That whenever any owner or owners, occupier or occupiers of any land or lands bordering upon any public road or highway, except a street or alley, in a town, may wish to plant and cultivate any hedge or live fence, along the margin of his, her or their land, it shall be lawful for any such person or persons, to set and plant any such hedge or live fence, precisely on the line of the road, public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge

said road, and such protection fence when placed opposite any live fence or hedge, actually set or planted, shall be permitted by the county commissioners and all other persons, to remain for the term of seven years. Provided, that the trustees of any township, may grant permission in writing to the owner or owners of any live fence or hedge, to continue such protection fence any term of time, which they may deem necessary.

§ 2. This act to take effect, and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Prevent the taking away of Books, Laws, Records, or other Public Documents from the Territorial Library and to preserve the same.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That it shall be unlawful for any person or persons to take and carry away from the capitol building, wherein is kept the territorial library, any book, books, laws, records, or other public document from the archives of the public librarian.

§ 2. That any person or persons so offending against the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not less than ten dollars nor to exceed one thousand dollars.

§ 3. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Regulate the Appointment and Define the Powers and Duties of Notaries Public.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the governor be and he is hereby authorized, subject to all the restrictions of this act, to appoint and commission notaries public in the several counties of this territory, who shall hold the office for the term of three years, unless sooner removed.

§ 2. Every applicant for the appointment of notary public shall produce to the governor the certificate of the judge of the district court of the district wherein the applicant resides, setting forth that the judge has knowledge, or has credible evidence that the applicant is a qualified elector and resident of the county for which he applies to be appointed. That he is of good moral character, and that he possesses sufficient ability to perform and discharge the duties of the office of notary public.

§ 3. When any person is appointed to be a notary public, the governor shall sign the commission of such person, and deliver the same

to the secretary of the territory, and the secretary shall direct and send the commission, together with a bond to be executed by the person appointed, to the clerk of the district court of the district wherein such person resides, and the clerk of the district court shall, within five days after receiving the same, notify the person appointed that he has received and holds the commission and bond, and if the person appointed does not appear before the clerk and execute the bond within thirty days after the date of the notice aforementioned, the clerk shall return the commission and bond to the secretary of the territory.

§ 4. Each person appointed to the office of notary public shall, within the time limited in section three, appear before the clerk of the district court, and execute and deliver a bond to the territory of Nebraska, in the sum of two thousand dollars, with security to be approved by the clerk, conditioned for the faithful performance of the duties of his office, and shall make oath or affirmation before the clerk that he will support the constitution of the United States, and the organic law of this territory, and that he will faithfully and impartially discharge and perform all the duties of his office, and this oath shall be endorsed on the commission and subscribed in the presence of the clerk ; and the clerk shall preserve the bond in his office and record the commission and oath in a book to be by him kept for that purpose, and shall send to the secretary of the territory a written notice that the requirements of the law are complied with, which notice the secretary shall preserve in his office.

§ 5. Each notary public, before entering upon the duties of his office shall provide himself with an official seal, with which he shall authenticate all his official acts, upon which seal shall be engraven the words "notarial seal," and the name of the county wherein he resides, and the word "Nebraska ;" and shall also provide himself with an official register, wherein he shall record all his official acts required by law to be recorded ; and the seal and register of a notary public shall not be levied on or sold.

§ 6. Every notary public so appointed, commissioned and qualified is hereby authorized and empowered, within the county wherein he resides, and for which he was appointed and commissioned to administer oaths and affirmations, to take depositions, to receive acknowledgments of deeds, mortgages, powers of attorney, and other instruments in writing, to demand acceptance and payment of foreign and inland bills of exchange, promissory notes and obligations in writing and to protest the same for non-acceptance or non-payment, as the case may require ; and to exercise such other powers and duties as by the law of nations and according to commercial usage, or by the laws of any other territory, state, government or country, may be exercised and performed by notaries public.

§ 7. In all the courts within this territory, the certificate of a notary public over his hand and official seal, shall be received as presumptive evidence of the facts contained in such certificate: Provided, that a person interested as party to a suit may contradict by other evidence the certificate of a notary public.

§ 8. Each notary public shall record in his official register the date

of every acknowledgment made before him; the name or names of the grantor or grantors, the name or names of the grantee or grantees, and the word "deed," "mortgage," "power of attorney," or other word or words indicating the nature of the official act, and shall record, in a comprehensive manner, together with a copy of every bill of exchange, promissory note, or obligation received by him for demand and protest, his official act and the date thereof, stating specifically the name of each drawer or endorser notified, and the place where notice was delivered or to which notice was sent.

§ 9. Each notary public may lawfully demand and receive for administering an oath or affirmation, the sum of twenty-five cents; for receiving and certifying to an acknowledgment of a deed, mortgage, or other instrument in writing, fifty cents; for the presentment, demand and protest of a bill of exchange, promissory note, or other obligation in writing, and notice to drawers and endorsers, the sum of one dollar and twenty-five cents; for taking a deposition, twenty-five cents for the first hundred words, and ten cents for every subsequent hundred words, and twenty-five cents for his official certificate, and shall not make additional charge for his official certificate except for his certificate to depositions.

§ 10. Every notary public, when notice by a party to any civil suit pending within this territory upon an adverse party, for the taking of depositions, has been deposited with him, or when a special commission issued out of any court of record without this territory, together with a notice for the taking of depositions, has been deposited with him, is empowered to issue summons and command the presence of witnesses, and to punish witnesses for neglect or refusal to obey his summons, or for refusal to testify when present, by commitment to the jail of the county for contempt; and all sheriffs and constables in this territory are hereby required to serve and return all process issued by notaries public, in the taking of depositions.

§ 11. No banker, broker or officer, salaried attorney, stockholder, clerk or agent of any bank, banker or broker, shall be appointed to or shall hold the office of notary public in this territory.

§ 12. If any notary public shall charge or receive any fee or reward for any act or service done or rendered by him under this act, greater than the amount herein limited, or shall dishonestly or unfaithfully discharge any of the duties of his office, such notary public shall, on complaint filed and substantiated in the district court of the county wherein he resides, be removed from his office by the court, and the court shall thereupon certify the fact of such removal to the secretary of the territory, and the person so removed shall be thereafter disqualified from holding the office of notary public in this territory. And if any person or persons shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public, the person or persons damaged or injured, may maintain a civil action on the bond of such notary public against such notary public and his sureties; and a recovery in such action shall not be a bar to any future action or actions for other cause, to the full amount of the bond.

§ 13. Each person who has held the office of notary public, shall

within thirty days after the expiration of his term or terms of office, or his removal from office, or his removal from the county, deposit his official register with the clerk of the district court for the county, who shall preserve the same, and in case of the death of a person holding the office of notary public, his executor or administrator shall, within thirty days after his decease, deposit his official register with the clerk and any person who shall neglect or fail to fulfill and perform the duty prescribed in this section, shall be liable in the penal sum of two hundred dollars, to be applied to the school fund of the county, which sum may be recovered by any citizen of the county suing therefor.

§ 14. If any clerk of the district court shall neglect or fail to fulfill and perform the duties imposed on him by this act, such person shall be liable in the penal sum of two hundred dollars, to be recovered and applied as provided in section thirteen.

§ 15. No deed, mortgage, power of attorney or other instrument in writing heretofore executed and acknowledged before a notary public and no certificate of an official act of any notary public within this territory, shall be held invalid or defective because the official seal of the notary certifying thereto, contained the initial or abbreviation of any name or word, or different words from those required to be contained or engraven on the seal of the notary public, by section seven of chapter sixteen of "An act for revising, consolidating and preparing a general code for the Territory of Nebraska," approved January 26, 1856.

§ 16. Chapter sixteen of an act entitled "An act for revising, consolidating and preparing a general code for the Territory of Nebraska" approved January 26, 1856, is, and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 17. The office of notary public, heretofore existing, under a law in force before the passage of this act, is hereby abolished; and no person appointed to the office of notary public before the taking effect of this act, shall possess or exercise any of the powers of a notary public after the taking effect of this act, except such person shall be re-appointed and commissioned according to the provisions of this act. Provided, that any person appointed by the governor to the office of notary public before this act takes effect, who possesses the qualifications herein prescribed, and who has before such appointment, complied with all the provisions of this act, preliminary to appointment, may hold the office for the term of three years after such appointment; and such officer shall, within thirty days after the taking effect of this act, file his bond with the clerk of the district court, and comply with the requirements of this act, or such appointment shall be rendered void and such person shall not thereafter possess or exercise any of the powers of a notary public.

§ 18. Hereafter the number of notaries public shall be limited, and until otherwise provided, there shall not be more than ten in each of the counties of Douglas and Otoe; and eight in each of the counties of Cass, Nemaha and Sarpy; and six in each of the other counties in this territory; and if by error any person may be appointed to the office when there is already the lawful number in the county for which such person is appointed, it shall be the duty of the clerk of the district

court, when the commission for the person appointed is received by him, to return the same to the secretary of the territory, with information of the fact.

§ 19. The secretary shall be entitled for receiving and forwarding the commission of a notary public, the sum of one dollar, and the clerk of the district court, for giving notice and recording the commission and oath, to the sum of two dollars, to be paid by the person appointed.

§ 20. This act shall take effect and be in force from and after the first day of January, 1859.

Approved November 4, 1858.

AN ACT

For the Relief of Paupers.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grand father, mother, grand mother, children, grand children, brothers or sisters of such poor persons, if they or either of them be of sufficient ability. And every person who shall refuse to support his or her father, grand father, mother, grand mother, child or grand child, sister or brother, when directed by the county commissioners of the county where such poor person shall be found, whether such relative shall reside in the same county or not, shall forfeit and pay to the county commissioners, for the use of the poor of their county, the sum of ten dollars for each and every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners, for the use of the poor aforesaid, before a justice of the peace of any other court having jurisdiction. Provided, that whenever any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relative except parent or child.

§ 2. The children shall first be called upon to support parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters shall next be called on, and if there be no brothers or sisters, the grand children of such poor person shall next be called on, and then the grand parents. Provided, married females, while their husbands live shall not be liable to a suit.

§ 3. When any such poor person shall not have any such relatives in any county in this territory, as are named in the preceding sections, or if such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury, in the manner hereinafter provided.

§ 4. Whenever any non-resident or any other person, not coming within the definition of a pauper, shall fall sick or die, in any county of

this territory, not having money or property to pay his board, nursing and medical aid, it shall be the duty of the county commissioner of the proper county, upon complaint being made to him, to give, or order to be given, such assistance to such poor person as he may deem just and necessary, and if such poor person shall die, then it shall be the duty of such county commissioner to give or order to be given to such person a decent burial, and the said county commissioner shall make such allowance for board, nursing, medical aid and burial expenses, as he shall deem just and equitable, which allowance shall be laid before the county commissioners at the next meeting of their board, and they shall either allow the whole, or such reasonable and just part thereof as ought to be allowed, and order the same to be paid out of the county treasury.

§ 5. The justices of the peace in each justices' district, in conjunction with such other persons as the county commissioners of each county may appoint, shall be and the same are hereby made overseers of the poor, and are vested with the entire and exclusive superintendence of the poor in their respective districts, excepting in cases of corporate towns or cities to which such superintendence and jurisdiction shall be by law granted.

§ 6. It shall be the duty of the said justices within their respective districts, and the person appointed, as aforesaid, diligently to inquire after all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, and to provide for them the necessary comforts of life by confiding the care of such poor person or persons to some moral and discreet household or householders, in the county of sufficient ability to provide for the same. Every person to whom the care of such poor person shall be committed shall execute a bond to the county in which such poor person shall reside, conditioned that he will treat such poor person with humanity and afford to him or her the necessary attention and comforts of life fitted to his or her condition; said bond shall set forth the sum to be given by said county, for keeping such poor person or persons.

§ 7. Said overseers shall at each regular session of the board of county commissioners make a full report of their actings and doings under this chapter, and return a list of all the poor within their respective districts specifying the age, sex and infirmities of each.

§ 8. Upon the making of such report, it shall be the duty of the county commissioners to make such appropriations as will justify any person having the custody of any poor person in affording to him or her suitable clothing and such comforts as may be suitable to his state and condition.

§ 9. Any sum set forth in the bond executed by any county as aforesaid may be lessened or increased at the discretion of said county without affecting the validity of said bond.

§ 10. The county commissioners may at any regular meeting remove any poor person from the custody of any person or persons to whom the care the overseers may have committed the keeping of such poor person, without subjecting the overseers or the county to any claim for damages.

§ 11. The overseers in fixing the amount to be paid for the keeping of any poor person, shall take into consideration the ability of the poor person to labor.

§ 12. Any person becoming chargeable as a pauper in this territory, shall be chargeable as such pauper in the county in which he or she resided at the commencement of the thirty days immediately preceding such person becoming so chargeable.

§ 13. If any person shall become chargeable in any county in which he or she did not reside at the commencement of the thirty days immediately preceding his or her becoming so chargeable, he or she shall be duly taken care of by the proper authority of the county, where he or she may be found, and it shall be the duty of the clerk of the county commissioners to send a notice by mail to the clerk of the county commissioners of the county in which such pauper resided, as before stated, that such person has become chargeable as a pauper, and requesting the authorities of said county to remove the said pauper forthwith, and to pay the expense accrued in taking care of him or her.

§ 14. If said pauper by reason of sickness or disease or by neglect of the authorities of the county in which he or she resides, or for any other sufficient cause cannot be removed, then the county taking charge of such individual or individuals may sue for and recover from the county to which said individual or individuals belong, the amount expended for and in behalf of such pauper or paupers, and in taking care of the same.

§ 15. The term, residence, mentioned in this chapter shall be taken and considered to mean the actual residence of the party or the place where he or she was employed, or in case he or she was in no employment then it shall be considered and held the place where he or she made it his or her home.

§ 16. If any person shall bring or leave any pauper or paupers in any county in this territory wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by and to the use of such county by action of debt before any justice of the peace in the proper county.

§ 17. The county commissioners in each county are authorized whenever they shall see fit so to do to establish a poor house.

§ 18. The county commissioners are hereby authorized to take to the county by grant, devise or purchase, any tract of land not exceeding six hundred and forty acres, for the purposes of said purchase.

§ 19. Said county commissioners are hereby empowered to receive donations to aid in the establishment of such poor house, and also empowered from time to time, as they shall see fit to levy and collect a tax not exceeding one fourth of one per cent on the taxable property in the county, and to appropriate the same to the purchase of land not exceeding the aforesaid six hundred and forty acres, and to erect and furnish buildings suitable for a poor house, and to put into operation, and to defray the actual expenses of said poor house, should the labors of the inmates be inadequate thereto.

§ 20. Said county commissioners are hereby authorized to appoint and

employ such agents and other persons, as may be necessary to establish and put into operation such poor house.

§ 21. Whenever the county commissioners of any county shall enter upon their records, that they have established a poor house, and that said poor house is ready for the reception of the poor of said county, then the authority conferred upon the overseers of the poor shall cease to be in force in said county: Provided, however, that if there be any particular case or cases which the court should deem prudent to put out under the provisions of this chapter, they may do so, making a proper entry of the circumstances upon their records.

§ 22. The title of the property authorized to be acquired by this chapter, for the purpose of said poor house, shall be made to the county.

§ 23. The county commissioners of any county in this territory, may at any regular meeting, if they at any time shall deem it to the interests of said county, appropriate out of any fund appropriated to said county for any purpose, or other money belonging to said county, any sum not exceeding two thousand five hundred dollars, for the purpose of purchasing a farm, and erecting thereon suitable buildings for a poor house for said county, as contemplated in sections seventeen, eighteen and nineteen of this chapter.

Approved November 4, 1858.

AN ACT

To Provide for the Holding of District Court in the Town of Dixon:

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the county of Dixon be and the same is hereby attached to the third judicial district of this territory, and that the judge of said district shall hold a term of the district court in said county, on the third Monday of May, A. D. 1859, and annually thereafter: Provided, that if the judge of said district may deem it necessary he may order two terms each year.

§ 2. The counties west shall be attached to said county for judicial purposes, until otherwise provided.

§ 3. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

Providing for the Better Regulation of Schools in Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That hereafter each and every township in any organized county in the territory shall compose but one school di-

trict for all purposes connected with the general interests of education in the township, and shall be confined to the management and control of a Board of Education, and the several school districts and fractional parts thereof, which now are, or may hereafter be established in the several townships of the territory, shall be regarded as sub-districts, and be subject to the management and control of local directors, as hereinafter provided; but nothing contained in this act shall be so construed as to give to the township board of education, or to local directors in sub-districts, jurisdiction over any territory in the township included within the limits of any city or incorporated village within the territory annexed thereto for school purposes, which shall elect or appoint a board of education as hereinafter provided, or which now is or may hereafter be governed as to schools, by any special act.

ELECTION OF LOCAL DIRECTORS.

§ 2. On the first Monday of March, in the year eighteen hundred and fifty-nine, there shall be held at the usual hour and place of holding elections in each of the sub-districts of the several townships of the territory, a school meeting of the qualified voters, residents within the sub-districts, and having the qualification of voters, at the territorial and county elections, who, when assembled, shall organize, by the appointment of a chairman and secretary, and proceed to elect by ballot three school directors for such sub-district; of those so elected, the person receiving the highest number of votes shall hold his office for three years, the person receiving the next highest number shall hold the office for two years, and the person receiving the next highest number shall hold the office for one year; and each shall continue in office until his successor is elected and qualified. In case two or more persons so elected have received an equal number of votes, the duration of their respective terms of office shall be determined by lot in the presence of the chairman and secretary of the meeting; and annually thereafter in the same manner on the first Monday in March, there shall be elected in each sub-district of the proper township one school director for the term of three years, and the minutes of the proceedings of any such sub-district meeting shall be signed by the chairman and secretary, and delivered to the directors who shall have been elected as aforesaid, to be recorded by the clerk in the records of the sub-district, and the said clerk of the sub-district shall forthwith certify to the township clerk, the names of the local directors so elected, specifying the term for which each was elected; if the directors of any sub-district so elected shall deem it expedient, they may designate the specific hour of the day on which the annual election for such sub-district shall be held, and in such case, shall cause five days' notice thereof in writing to be posted up in three of the most public places in such sub-district.

§ 3. The said directors, within five days after their election, shall take an oath or affirmation to support the constitution of the United States and the organic law of this territory and faithfully and impartially to discharge the duties of their offices, which said oath the directors are authorized to administer to each other. And in case a vacancy shall occur in the office of director, by death, resignation, refusal to serve,

or otherwise, it shall be the duty of the township clerk to fill such vacancy within ten days after being informed thereof by appointment for the unexpired term.

§ 4. If the qualified voters of any sub-district shall fail to meet and elect school directors as prescribed in the second section of this act, it shall be lawful for any three qualified voters of such sub-district to call a special meeting of the voters of such sub-district, for the purpose of electing directors, on first giving five days' notice in writing of the time and place of holding such meeting, by posting the same in three of the most public places in such sub-district, and the directors so elected at such special meeting, shall hold their offices for the same periods of time as if elected on the first Monday of March, as prescribed in said second section; except, that their said terms of office shall be considered as having commenced on the first Monday of March next preceding the time of holding such special meeting.

§ 5. It shall be the duty of the directors, any two of whom shall constitute a quorum, to meet as soon as practicable after having been elected and qualified, at such place as may be most convenient in the sub-district, and organize by appointing one of their number clerk of the sub-district, who shall preside at the official meetings of the directors, and record their proceedings in a book to be provided for the purpose, together with the minutes of the proceedings of the annual school meetings held in the sub-district by the qualified voters thereof, which shall be a public record; and all such proceedings, when so recorded shall be signed by the clerk of the proper sub-district. The directors may meet as frequently as they may think necessary for the transaction of business, and fill any vacancy in the office of clerk which may occur in the sub-district, or, in case of his absence, either of the above directors may officiate temporarily in his place. •

DUTIES OF LOCAL DIRECTORS.

§ 6. It shall be the duty of the school directors in each sub-district to take the management and control of its local interests and affairs; to employ teachers, to certify the amount due them for services to the township clerk, who shall draw an order on the township treasurer for the amount; and to dismiss any teacher, at any time, for such reason as they may deem sufficient; and to visit the school or schools of the sub-district at least twice during each term by one or more of the number, with such other person or persons competent to examine pupils in their studies, as they may choose to invite.

§ 7. It shall be the duty of the directors, in their respective sub-districts, to negotiate and make, under such rules and regulations as the township board of education may prescribe, all necessary contracts in relation to providing fuel for schools, repairing buildings or furnishing school houses, purchasing or leasing school house sites, renting schoolrooms and making all other provisions necessary for the convenience and prosperity of schools in their sub-districts, but no contracts shall be made by the directors, under the provisions of this section, the payment of money from the township school fund applicable to such purposes, which in any one year shall exceed the amount distributed

to the sub-district in proportion to the enumeration of scholars resident therein, without first obtaining the consent or order of a majority of the township board of education; and all contracts made by the local directors under the provisions of this section, shall be reported to the said board at their next meeting after the making of such contracts, and said township board of education, in their corporate capacity, on the part of the sub-district, shall be held responsible for the performance thereof.

§ 8. It shall be the duty of the directors in each sub-district to take, or cause to be taken, annually, between the first and third Monday of October, an enumeration of all the unmarried white youth, noting them separately, between the ages of five and twenty-one years, resident within such sub-districts, and not temporarily there, designating between male and female, and return a certified copy thereof to the township clerk; and in case the directors in any sub-district shall fail to take and return the enumeration aforesaid, it shall be the duty of the township clerk to employ a competent person to take the same, and allow him a reasonable compensation for his services, and shall proceed to recover the amount so paid for such services in a civil action before any court having jurisdiction, in the name of the territory of Nebraska, against said directors in their individual capacity; and in such suits said clerk shall be a competent witness; and the money so collected shall be applied to the use of common schools in the proper township: The township clerk shall make an abstract of the enumeration so returned to him, designating the number of youth in such sub-district, and transmit such abstract, duly certified, to the county clerk, within twenty days after the return made to him by the directors or the person appointed to take such enumeration.

TOWNSHIP BOARD OF EDUCATION.

§ 9. That the township board of education shall consist of a local director from each sub-district of the township, who has been appointed clerk in his sub-district, a majority of whom shall constitute a quorum for the transaction of business, and from their number they shall elect a chairman, township clerk and township treasurer, the clerk and treasurer each to give bond to the territory in twice the probable sum that will pass through their hands. It shall be the duty of said township clerk to present at the meetings of the board, and to record in a book to be provided for the purpose, all of their official proceedings, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairman and clerk.

§ 10. The said township board of education in each township of the territory, and their successors in office shall be a body politic and corporate in law, and as such may contract and be contracted with, sue and be sued, plead and be impleaded in any court of law or equity in this territory, and may receive any gift, grant, donation or devise, made for the use of any school or schools, within their jurisdiction; and moreover, they shall be and are hereby invested in their corporate capacity with the title, care and custody of all school houses, school house sites,

school libraries, apparatus or other property belonging to the school districts as now organized or which may hereafter be organized within the limits of their jurisdiction, with full power to control the same in such manner as they think will best subserve the interests of common schools and the cause of education; and when, in the opinion of the board, any school house or school house site has become unnecessary, they may sell and convey the same in the name of the township board of education of the proper township; such conveyance to be executed by the chairman and clerk of said board, and shall pay the proceeds to the township treasurer of the proper township for the benefit of schools and all conveyances of real estate which may be made to said board shall be to said board in their corporate name, and to their successors in office.

§ 11. It shall be the duty of the township board of education to hold regular sessions on the third Monday of April and on the third Monday of October, in each year, at such place in the immediate neighborhood as may be convenient for the transaction of any business which may be necessary in relation to the subject of either the primary or grade schools of the township, with power to adjourn from time to time, and to hold special meetings at any other time or place within the proper township, as they may think desirable for the transaction of business as aforesaid, and at all such meetings shall appoint one of their number to the chair, and in case of the absence of the township clerk, may appoint one of their own number to serve temporarily as clerk.

§ 12. The township board of education shall have the management and control of all the central or high schools of their proper township which may be established therein under the authority of this act, with full power in respect to such schools, to employ, pay and dismiss teachers, to build, repair and furnish the necessary school houses, purchase or lease sites therefor, or rent suitable school rooms, and make other necessary provisions relative to such schools as they may deem proper; and it shall also be the duty of said board of education, to exercise all the powers conferred on local directors in respect to sub-district schools, whenever such local directors shall neglect to discharge their duties in any sub-district as required by this act; and it shall also be the further duty of said board to prescribe rules and regulations for the government of all the common schools within their jurisdiction; and said board of education may provide for German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together, and if the board shall deem it necessary they may appoint one of their number the acting manager of schools for the township, who shall do and perform all the duties as the board may prescribe in relation to the management and supervision of the different schools, and the educational interests of the township, and may allow him a reasonable compensation for his services.

§ 13. The said board shall prepare, or cause to be prepared, a map of their township, as often as they may deem necessary, on which shall be designated the sub-districts of the township, which they may change or alter at any regular session, and the number of scholars assigned

each; but no sub-district shall contain within its limits less than sixty scholars by enumeration, except in cases where in the opinion of the board it is necessary to reduce the number; and it shall be the duty of the board to establish a school in each sub-district of the township, of such grade as the public good in their opinion may require, and in the location of primary schools, or schools of higher grade, the board shall have reference to population and neighborhood, paying due regard to any school house already built, or site procured, as well as to all other circumstances proper to be considered so as to promote the best interests of schools.

§ 14. The board shall have power to assign such number of scholars to the several primary schools as they may think best, and when such assignment has been made, shall furnish the teacher a list of the scholars so assigned; and the board shall also have full power to regulate and control the admission of scholars to schools of a higher grade, according to age and attainments, and may admit scholars over twenty-one years of age, and may suspend, or authorize the local directors to suspend, from the privileges of either of the schools, any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session of the school.

§ 15. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining township, or whenever it may be desirable to establish a school composed of parts of two or more townships, it shall be the duty of the respective boards of the townships in which such persons reside, or in which such schools may be situated, or of the townships or parts of which the school is to be composed, to transfer such persons for educational purposes to the township in which such school house is or may be located; but the enumeration of scholars shall be taken in each township as if no such transfer had been made, and such school, when so composed, shall be supported from the school funds of the respective townships from which the scholars may have been transferred; and the board of that township in which the school house is situated shall have the control and management of such school, and the board of adjoining township or townships so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the county clerk of their proper county as a part of their annual estimates for school purposes, and draw orders on their respective township treasurers for such sum as will be in proportion to the enumeration of scholars so transferred, in favor of the board of that township in which such school is located, to be appropriated to the payment of teachers and for other purposes connected with the establishment and maintenance of said school, as far as applicable.

§ 16. The said board shall have power to determine the studies to be pursued and the school books to be used in the several schools under their control, and shall make and enforce such rules and regulations relative to the use and preservation of the school libraries and apparatus as they may think advisable, and shall appoint, or authorize the local directors to appoint, a suitable person to act as librarian and to

take charge of the school apparatus, resident at some convenient place in the neighborhood where the school is kept, and may require such librarian to give bond for the faithful discharge of his duties, and allow him such compensation as they may think reasonable.

REPORT REQUIRED OF TEACHERS.

§ 17. It shall be the duty of the school teacher to make out and file with the township clerk at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the township board or local directors and until such report shall have been certified, and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services.

STATEMENT REQUIRED OF DIRECTORS.

§ 18. The board of education in each township shall prepare, or cause to be prepared, and forwarded to the county clerk at the same time when the return of the enumeration of scholars is required to be made, a statement exhibiting the number of children in the township between the ages of five and twenty-one years, distinguishing between male and female, the number of schools, specifying the different grades, the number of teachers, male and female, the number of children, male and female, who have attended school during the past year, the average attendance, the length of the terms of schools, compensation of teachers, male and female, the number and condition of the school houses and furniture and the estimate value thereof, the number and condition of the books in the school libraries, the number of libraries, the kind of school books used in the schools, the number and value of school apparatus, and the full accounts of the expenditures for school purposes, together with such other statistics and information in relation to schools as the territorial commissioner of schools may require.

CENTRAL OR HIGH SCHOOLS.

§ 19. Each township board of education shall have power, as hereinafter provided, to establish in their respective townships such number of graded schools, or such modifications of them, as the public interest may require; and in case of the establishment of such graded schools, it shall be the duty of the board so to classify the children of the township as to secure to all, as far as practicable, an equal participation in the advantage thereof; and the board shall designate the sub-districts by numbering them, and schools of a higher grade than primary, shall be known by the appellation of central or high schools.

§ 20. Whenever, in the opinion of the board of education, it shall become necessary or desirable to provide one or more such central or high schools in their respective townships, the said board shall estimate the probable cost thereof, and call a special meeting of the qual-

voters of the township and who are not residents of any of the territory or districts named in the first section of this act over which the jurisdiction of the township and local directors is excluded, at the usual places of holding elections, first giving twenty days' notice of the time and object of holding such meeting, by posting the same in some public place in each of the several sub-districts of the township, in which notice the amount or rate of tax as estimated by the board shall be stated, and the electors when convened in pursuance of such notice shall decide by vote any question which may be deemed important in relation to the cost and location of the building or buildings, or other provisions necessary for the establishment of any such school, and also the amount of township tax which may be levied for the purpose, and the chairman and clerk of the board shall be the chairman and clerk of the meeting, and the clerk shall record in the records of the board the action of the meeting, and the board shall be governed by the direction and vote of said meeting in relation to the subjects or matters so submitted.

ANNUAL ESTIMATES TO BE CERTIFIED BY THE BOARD.

§ 21. It shall be the duty of the board of education in any organized township in the territory annually to determine by estimate, as nearly as practicable, the entire amount of money necessary to be expended in the township for school purposes other than for the payment of teachers, and also such additional amount as the board may think necessary, not exceeding two mills on the dollar valuation of the taxable property of the township, for the exclusive purpose of sustaining teachers in the central or high schools, or for the purpose of prolonging, after the territorial funds have been exhausted, the terms of the several sub-districts or primary schools in the township, or for both purposes, as the board may adjudge best, which several amounts of money so estimated the board shall make known by certificate in writing, on or before the first Monday in June in each year, including any tax which may have been voted by a special meeting of electors, as provided in the preceding section, to the county clerk of the proper county, who shall thereupon assess the entire amount of such estimates on all the taxable property of the township not included in any city or incorporated town or territory annexed thereto forming any special district, to be entered by said county clerk on the tax duplicate of the county, and collected by the county treasurer at the same time and in the same manner as territorial and county taxes are collected, and when collected shall be paid over to the treasurer of the proper township on the order of the county clerk; and said county treasurer shall be entitled to receive for collection one per cent on all moneys by him collected for school purposes, and no more.

§ 22. The township board of education shall have power, when in their opinion justice and equity require it, to estimate separately the costs of purchasing a school house site and erecting or repairing a school house thereon, in any particular sub-district of the township wherein the inhabitants have not heretofore borne a reasonable share of the burden of taxation for such purpose in comparison with other

sub-districts in the township, and certify such portion as they may deem just and equitable, of the amount of such estimate to the county clerk of the proper county, together with a map of the lands and name of the tax payers in any such sub-district, which amount so certified shall be assessed by the county clerk on the property therein subject to taxation, and placed on the county duplicate, specially to be collected and paid over in the same manner as other school taxes and be applied for the specific purpose of providing a school house in the sub-district.

§ 23. All school funds which may come into the hands of the township treasurer, from whatever source, shall be paid out only on the order of the clerk of the board of education, under the directions of the board; except in paying teachers for their services, and the said clerk may, on such teachers presenting their certificate of qualification, and depositing with the clerk true copies thereof, draw the requisite order on the treasurer for any such amount as may have been certified to be due by any two of the local directors of the proper sub-district in which the teacher was employed; and so much of the school moneys coming into the hands of the treasurer, as may be derived from the territorial tax, or from any township tax levied for the continuation of schools after the territorial fund has been exhausted, shall be applicable only to the payment of teachers in the proper township, and shall be drawn for no other person whatever, and all school funds made applicable to the payment of teachers only, shall be distributed to the several sub-districts and fractional parts thereof, in the township, in proportion to the enumeration of scholars, with the exception of so much of the township tax as may have been levied and reserved by the board for sustaining teachers in the central or high schools; and such school funds as arise from the sale or rents of sections sixteen and thirty-six or other lands in lieu thereof, shall be distributed to the localities in which such funds belong. All other school funds of the township raised for the central or high schools, nor made applicable to the payment of teachers, as aforesaid, shall be applied, under the directions of the board, in repairing, building or furnishing school houses, in procuring school house sites, and in making such other provisions for schools in sub-districts of the proper township, as may in the opinion of the board be necessary; and each township board shall make the necessary provisions for continuing the schools in operation in their respective townships for at least seven months in each year.

DIVISION OF DUTIES AND LIABILITIES OF CLERK.

§ 24. The clerk of the board of education, or any one of the board designated for that purpose, or the acting manager of schools of the township, may do and perform all such duties and services connected with the interest of schools as the board may direct, and report the same to the board for their action and approval; and it shall be the duty of the clerk of the board to keep a full record thereof, in connection with the record of the other official proceedings of the board, in case of failure to keep such record or other records required by law, the clerk of the board shall be liable to a civil action for all

or damages that may ensue to any person or persons, or to the school district in the name of such person or persons, or board of school directors, as the case may be, and shall moreover be liable on complaint filed in the name of the Territory of Nebraska, before any justice of the peace, or other court having jurisdiction, to a fine not exceeding one hundred dollars, which when collected shall be paid over to the treasurer of the proper township for the benefit of schools.

§ 25. It shall be the duty of the board of education to make settlements with the township treasurer at their regular session in April, annually; but if for want of time or other reason, a settlement can not be made at the said session, then it shall be the duty of the board, to appoint a committee composed of one or more of their own members, to make such settlement, as soon as practicable; and report the result to the clerk of the board, who shall record an abstract thereof in the records of the board.

TREASURER AND HIS DUTIES.

§ 26. The township treasurer in each township shall be the treasurer of all school funds for school purposes belonging to the township, arising from whatever sources, and on his election, and before entering upon the duties of his office, he shall give bond with sufficient security in double the probable amount of money that shall come into his hands payable to the territory of Nebraska, to be approved by the trustees of the township, conditioned for the faithful disbursement according to law, of all such funds as shall from time to time come into his hands, and on the forfeiture of such bond, it shall be the duty of the township clerk to prosecute and collect the same for the use of the schools in the township; if such township clerk shall neglect or refuse so to prosecute, then any freeholder may cause such prosecution to be instituted.

§ 27. Before the county clerk shall issue to the township treasurer any order on the county treasurer for the payment of any school fund belonging to the township, such township treasurer shall furnish the county clerk with a certificate from the township clerk, that such treasurer has executed and filed with him a bond, as provided for in the foregoing section, and also stating the amount of said bond, and the county clerk shall in no case permit the township treasurer to leave in his hands at any one time an amount of school funds over one-half the amount of the penalty in such bond; and the township board shall allow the township treasurer a compensation equal to one per cent on all school funds disbursed by him to be paid on the order of the clerk out of the township treasury.

§ 28. The township treasurer shall annually between the first and twentieth of February, settle with the county treasurer, and account to him for all moneys received, from whom, and on what account, and the amount paid out for school purposes in his township; the county treasurer shall examine the vouchers for such payments and if satisfied with the correctness thereof, shall certify the same, which certificates shall be prima facie a discharge of such treasurer, and at the expiration of his term of service, said treasurer shall deliver over to

his successor in office, all books and papers, with all moneys or other property in his hands belonging to said township or the schools therein and also all orders he may have redeemed since his last annual settlement with the county treasurer, and take the receipt of his successor therefor, which he shall deposit with the township clerk within ten days thereafter, and for making such annual settlement he shall be entitled to receive the sum of one dollar to be paid out of the county treasury on the order of the county clerk.

§ 29. In case the township treasurer shall fail to make such annual settlement within the time as prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars to be recovered in a civil action in the name of the Territory of Nebraska, and when collected to be applied to the use of common schools in the proper township; and it is hereby made the duty of the county treasurer to proceed forthwith in case of such failure by suit against such treasurer, before any justice of the peace of his county to recover the penalty aforesaid; but when it shall appear on trial to the satisfaction of said justice that said treasurer was prevented from making such annual settlement, within the time prescribed, by sickness or unavoidable absence from home and that such settlement has since been actually made, it shall be lawful for the justice to discharge such treasurer on payment of costs.

OF CITIES AND VILLAGES.

§ 30. Each city or incorporated village, including the territory annexed to the same for school purposes not otherwise specially regulated by charter, and which with the territory annexed, contains not less than three hundred inhabitants, shall be and is hereby created a separate school district, and the qualified voters of such city or village with the territory annexed shall at the same time, and in the same manner that the local directors of sub-districts of the township are elected by the provisions of this act, proceed to elect three persons who shall constitute a board of education for such city or village with the territory so annexed, and such board shall have the same powers, perform the same duties and be subject to the same penalties as township board of education: Provided, that by agreement between the board of education of the township in which such city or village with the territory annexed may be situated, and the board of education of such city or village with the territory annexed, transfers of territory not within the limits of such incorporation may be made to or from the districts provided for in this section.

§ 31. That said board of education in any city or incorporated village, shall be authorized when they think it advisable, to divide such city or village into sub-districts; and they may establish schools of different grades, and ordain such rules and regulations for the government and discipline of such schools as they may think conducive to the public good, and it shall be lawful for the township board of education in any township in which such city or incorporated village is situated by and with the consent of the board of education of any such city or incorporated village to transfer thereto for educational purposes, the scholars of such parts of their respective townships that lie adjacent

thereto, and all such transfers shall be controlled and all such schools supported in the same manner, and on the same principles, as in case of like transfer for the convenience of schools where two or more townships join, as provided for in this act.

§ 32. In all such cities or incorporated villages, the clerk or recorder of such incorporated body, shall be the clerk of the board of education, and he shall do and perform all the duties required of the clerk of a township board of education, and such other duties as the board of education, may from time to time prescribe; and all orders of the board of education for the payment of money shall be countersigned by the clerk or recorder of said incorporation, and it shall be the duty of the treasurer of any such city or incorporated village to receive and disburse the school funds of such city or village in the same manner as is required of the township treasurers in their respective townships, and for his services shall be entitled to the same compensation: Provided, that the board of education shall require the the treasurer to enter into a bond as required of the township treasurers, and that the said treasurer shall furnish the county clerk a certificate from the clerk or recorder of such city or incorporated village, that such treasurer has executed and deposited such bond, stating also the amount as is required of township treasurers in similar cases.

§ 33. The board of education of any city or incorporated village, shall have and may exercise all the powers which are by this act conferred upon township boards of education and shall do and perform the like duties in all respects so far as applicable, and the school fund shall be divided among the sub-districts, so as to make the distribution as nearly equitable as possible. All taxes for building, purchasing, repairing or furnishing school houses and lots shall be equally assessed on all the property subject to taxation in such city or incorporated village, and the board of education in expending the same shall make the necessary provisions for the sub-districts.

APPORTIONMENT OF SCHOOL FUNDS.

§ 34. The territorial treasurer shall, annually, apportion the common school funds among the different counties, upon the enumeration and returns made to him by the territorial commissioner of common schools, and certify the amount so apportioned to the county treasurer of each county, stating from what source the same is derived, which said sum the several county treasurers shall retain in their respective treasuries from the territorial fund; and the county clerks shall annually apportion the school fund in their respective counties, according to the enumeration and returns in their respective offices, and no township or other district, city or village, which shall have failed to make and return such enumeration, shall be entitled to receive any portion of the common school fund. And in making such distribution, each county clerk shall apportion all moneys collected on the tax duplicate of any township for the use of schools, to such township; all moneys received from the territorial treasurer, on account of interest on, or the money accruing from the sale of sections sixteen and thirty-six, or other lands in lieu thereof, to the civil townships and parts of civil townships, in the

original surveyed township or fractional township to which such lands belong; and all other moneys for the use of schools in the county, and not otherwise appropriated by law, to the proper township; and he shall immediately, after making such apportionment, enter the same into a book kept for that purpose, and shall furnish the township treasurers and township clerks, treasurers and recorders of incorporated cities or villages, as the case may be, each with a copy of said apportionments, and give an order on the county treasurer to each township treasurer, or such treasurer as may be entitled to receive the same, for the amount of money belonging to his respective township, city or village, and take a receipt from such treasurer for the amount thus received; and the county treasurer shall collect, or cause to be collected, the fines and other moneys for school purposes in his county, and he shall inspect accounts of interest for sections sixteen and thirty-six, or other school lands, whether the interest is paid by the territory or by the debtor, and take all proper measures to secure to each township its full amount of school funds.

§ 35. When any original surveyed township, in which sections sixteen and thirty-six have been sold, shall lie in two or more counties, the clerks of the respective counties shall certify to the clerk of the county in which that portion of said township lies, containing said sections sixteen and thirty-six, the enumeration of the scholars in that part of said township, embraced within their respective counties; and the clerk of said county in which said sections sixteen and thirty-six are situated shall apportion the funds derived from said section or sections to different portions of said township, according to the enumeration, and shall certify to the clerk of the other counties, the amount belonging to the parts of the said township situated in their respective counties, draw an order in favor of the treasurers of the other counties on the treasurer of his own county for the amount going to each; and the clerk of the respective counties shall apportion the same in their respective counties, to such portions or parts thereof as may be entitled thereto.

§ 36. The interest on the purchase of any such sections, sixteen and thirty-six, belonging to any such originally surveyed township, sold as aforesaid, lying in two or more counties, shall be paid over on the order of the clerk of that county, in which sections sixteen and thirty-six are embraced, to the treasurer of the same county, to be apportioned as pointed out in the preceding section.

RETURN OF ABSTRACT TO TERRITORIAL COMMISSIONER.

§ 37. The county clerk of each and every county, shall on or before the twentieth day of December, annually make out and transmit to the commissioner of common schools, an abstract of all the returns of school statistics made to him from the several townships in his county, according to the form that may be prescribed by the territorial commissioner, and he shall cause to be distributed all such circulars, blanks and documents, including school laws and documents, in the several townships in the county, as said commissioner shall lawfully require. In case the county clerk shall fail from any cause to make return of the abstract as aforesaid, it shall be the duty of the county commissioners to de-

for every such failure, from the annual salary or allowance made to the county clerk for his services, fifty dollars.

§ 38. The county commissioner of each county in this territory, shall make the same allowance to the county clerks out of their respective county treasuries, for services performed and expenses incurred under this act, as is allowed for other services of like nature.

§ 39. The township clerks and county clerks shall be responsible for all losses sustained by any township or county, by reason of any failure on their respective parts, to make and return the enumeration and abstracts thereof as herein provided, and shall be liable for the same in a civil action, at the suit of the Territory of Nebraska, and the amount so recovered shall be apportioned in the same manner as the school funds would have been to the respective counties or townships as the case may be.

SCHOOL HOUSE EXEMPT FROM SALE ON EXECUTION.

§ 40. Each and every lot or parcel of land which heretofore has been or hereafter shall be appropriated for the use of common schools in this territory, on which there has been or shall be a school house erected, and which has been or shall be occupied for the purpose of accommodating a common school of whatever grade in the usual manner, from time to time, howsoever or by whomsoever the legal title to the same may be held and vested, shall be and the same is hereby exempted from sale on any execution, or other writ or order in the nature of an execution.

APPOINTMENT OF SCHOOL EXAMINERS AND THEIR DUTIES.

§ 41. It shall be the duty of the probate judge in the several counties of this territory, as soon after the election of school officers under the provisions of this act as practicable, to appoint a county board of school examiners, to consist of three competent persons resident in the county, who shall hold their office for the term of two years, and until their successors are appointed, and all vacancies in the said board which may hereafter occur, whether from expiration of the term of office, refusal, or otherwise, shall be filled by like appointment by said judge.

§ 42. It shall be the duty of the examiners to fix upon the time of holding meetings for the examination of teachers in such places in their respective counties as will in their opinion, best accommodate the greatest number of candidates for examination; notice of all such meetings having been published in some newspaper of general circulation in their respective counties, and at such meetings any two of said board shall be competent to examine applicants, and grant certificates; but no fee or charge shall be made for a certificate. No certificate of qualification shall be valid in any county, except that in which the examination took place nor for a longer period than two years; and if at any time the recipient of the certificate shall be found incompetent or negligent, the examiners or any two of them, may revoke the same, and require such teacher to be dismissed; but such teacher shall be entitled to receive payment for services only up to the time of such dismissal; and no person shall be employed as a teacher in any primary common school, unless such person shall have first obtained from said

examiners, or any two of them, a certificate of good moral character and that she or he is qualified to teach orthography, reading, writing, arithmetic, geography, and English grammar; and in case such person intends to teach in any common school of higher grade, he or she shall first obtain a certificate of the requisite qualifications in addition to the branches aforesaid.

§ 43. The said board of examiners shall appoint one of their number to serve as clerk, who shall keep a record of their proceedings, noting the number and date of each certificate given, to whom and for what term of time, and for what branch of studies; and the said board may make all needful rules and regulations for the proper discharge of the duties. The members of the board shall be entitled to receive one dollar and fifty cents each for every day necessarily engaged in official service, to be paid out of the county treasury, on the order of the county clerk, and the county clerk may require the accounts when presented to be substantiated on oath, which said clerk may administer and file in his office.

TERRITORIAL COMMISSIONER.

§ 44. There shall be elected by the qualified electors of this territory at the next annual election for territorial and county officers, and every two years thereafter a territorial commissioner of common schools, who shall hold his office for the term of two years, and until his successor is elected and qualified. The election of said commissioner, and the returns thereof, shall be the same in all respects, as provided for the election of other territorial officers; and in case of vacancy shall happen in said office by death, resignation or otherwise the governor shall fill the same by appointment for the unexpired term.

§ 45. Before entering on the charge of his official duties, the commissioner shall give bond, in the penal sum of ten thousand dollars to the Territory of Nebraska, with two or more sureties to the acceptance of the secretary of the territory, conditioned that he will true account for and apply all moneys or other property which may come into his hands in his official capacity, for the use and benefit of common schools, and that he will faithfully perform the duties enjoined upon him according to law; and he shall also take and subscribe an oath of affirmation to support the constitution of the United States and the organic law of this territory, and diligently and faithfully to discharge the duties of his office as prescribed by law, which bond, with the certificate of his oath endorsed thereon, shall be filed with the treasury of the territory.

§ 46. The books and papers of his department shall be kept at the seat of government, where a suitable office shall be furnished by the territory at which he shall give attendance, when not absent on private business; and the territorial librarian shall, in addition to the duties of his office, discharge the duties of secretary to the commissioner of common schools, under his direction.

§ 47. It shall be the duty of the commissioner to spend annually an average at least twenty days in each judicial district of the territory, superintending and encouraging teachers' institutes, confer-

with township board of education, or other school officers, counseling teachers, visiting schools, and delivering lectures on topics calculated to subserve the interests of popular education.

§ 48. As soon as the revenue, to be raised as hereinafter provided, for the purpose of furnishing the common schools with libraries and apparatus, will admit, it shall be the duty of the said commissioner to purchase the same, and the books and apparatus so purchased shall be distributed, through the clerk's office of each county, to the board of education in each township, city or incorporated village, according to the enumeration of scholars.

§ 49. He shall also exercise such provision over the educational funds of the territory as may be necessary to secure their safety and right application and distribution according to law. He shall have power to require of county clerks, township boards of education, or other local school officers, clerks and treasurers of townships, county treasurers and clerks, recorders and treasurers of cities and villages, copies of all reports by them required to be made, and all such other information in relation to the fund and condition of schools, and the management thereof, as he may deem important.

§ 50. He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under this act, and shall cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith.

§ 51. He shall cause as many copies of the laws relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed in each county with the laws, journals and other documents, for the use of the school officers therein, as often after the first distribution as any change in said law may be made of sufficient importance, in the opinion of the commissioner, to require a republication and distribution thereof.

§ 52. It shall be the duty of said commissioner of common schools to make an annual report in each and every year, to the general assembly, who shall cause the same to be published.

§ 53. The territorial commissioner, in the annual report of his labors and observations, shall present a statement of the condition and amount of all funds and property appropriated to the purpose of education; a statement of the number of private or select schools in the territory, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of common schools in the territory, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, and the number of teachers attending them; a statement of the estimate and accounts of the expenditures of the public school fund of every description; a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the territory as he may think of importance.

§ 54. The said commissioner shall be entitled to receive for his services the sum of one thousand dollars annually, payable quarterly out of the territorial treasury, on the warrant of the territorial auditor.

SCHOOL LIBRARIES.

§ 55. For the purpose of furnishing school libraries and apparatus to all the common schools in the territory, and for the further purpose of sustaining and increasing such libraries and keeping up a supply of school apparatus in the schools as aforesaid, from time to time, as may be considered necessary in order to afford equal facilities to the said schools in this respect, as nearly as applicable, there shall hereafter be assessed, collected and paid annually in the same manner as the territorial and county revenues are assessed, collected and paid, on the grand list of property taxable for territorial purposes, a territorial tax of one-tenth of one mill on the dollar valuation, to be applied exclusively for the purposes aforesaid, and the attendant expenses, under the direction of the commissioner of common schools. In purchasing libraries for the common schools, no books of a sectarian or denominational character shall be purchased for said library.

§ 56. The amount of said tax when collected shall be paid over by the county treasurers to the territorial treasurer, at the time of making their annual settlement, and shall be paid out by that officer, for the purposes aforesaid; upon the warrant of the territorial auditor.

§ 57. It shall be the duty of the county clerk, when the said libraries or apparatus shall be received, to distribute the same to the clerks of the township boards of education, or other local school officers, in the respective counties, having in charge the interests of common schools, and the books and apparatus so furnished shall be deemed the property of said several boards or local school officers to whom the same may have been delivered, and shall not be subject to execution, sale or alienation, for any cause whatever.

§ 58. The local boards of education, or other school officers having charge of common schools, shall be held accountable for the preservation of said libraries and apparatus; and they shall have power to prescribe the time of voting, and the periods of returning the books belonging to the libraries, and also to assess and collect the damages which may be done to the books by persons entitled to their use, and also to provide for the safe keeping of the school apparatus.

§ 59. It shall be the duty of the local school boards or other school officers having charge of schools to appoint the librarians and determine the places where the libraries shall be deposited, selecting such central points as will best accommodate the schools and families of the district or sub-district hereinbefore provided; and every family in each district or sub-district shall be entitled to the use of one volume at a time from the school library, although no member of such family attends any of the schools of the township; and the library shall be open, under the inspection of the librarian, at stated periods throughout the year to be prescribed by the board of education or other proper school officer without regard to the session of schools.

TERRITORIAL SCHOOL FUND.

§ 60. For the purpose of affording the advantage of a free education to all the youth of this territory, the territorial common school fund shall hereafter consist of such sum as will be produced by the annual levy and assessment of two mills upon the dollar valuation on the grand list of the taxable property of the territory, and there is hereby levied and assessed annually in addition to the revenues required for general purposes, the said two mills upon the dollar valuation as aforesaid, and the amount so levied and assessed shall be collected in the same manner as other territorial taxes, and when collected, shall be annually distributed to the several organized counties of the territory, in proportion to the enumeration of scholars and be applied exclusively to the support of common schools.

§ 61. All fines assessed for the breach of the penal laws of the territory and all forfeitures which may accrue, all lands and other estates which shall escheat to the territory for the want of heirs or kindred entitled to the inheritance, all lands which have been or may hereafter be granted to the territory when no special purpose is expressed in the grant, and all unclaimed fees as provided by law, shall be denominated school funds, the income of which, together with the taxes mentioned and specified in this act, shall be applied to the support of common schools.

MISCELLANEOUS PROVISIONS.

§ 62. The debts which have been heretofore contracted by any school district for school purposes, shall be provided for by the estimates of the proper school boards created under the provisions of this act.

§ 63. The process, in all suits against any township board of education or other local officer having charge of any of the public schools under the provisions of this act, shall be by summons, and shall be executed by leaving a copy thereof with the clerk or secretary of such board or other school officer, at least ten days before the return day thereof. And any suit, either in favor or against any such board or other school officer, shall be prosecuted or defended, as the case may be, by the district attorney of the proper district, as a part of his official duties.

§ 64. The local board of education, or other local officers having charge of schools in any city, township or village, in which common schools have been organized under the act for the better regulation of public schools in cities, towns, &c., or under any special act shall be and are hereby authorized, whenever they may deem it expedient to call a meeting of the qualified voters of any such city, township, or village, on giving thirty days' public notice thereof, to determine by vote whether the common schools of such city, township, or village shall be conducted and managed in accordance with the provisions of this act; and if a majority of the voters are found to be in favor of the change, then said local board, or other school officers shall hereafter proceed, in accordance with the provisions of this act, until their successors shall be elected and qualified, and such city or village may provide by ordinance for the election or appointment of a board of education, prescribing their num-

ber and term of office; and such board when so elected or appointed and qualified, shall together with the clerk or recorder, of such city or village possess the same powers and discharge the same duties within the limits of their jurisdiction, as local directors and boards of education in townships.

§ 65. The respective township boards of education, and their successors in office shall have power to take and hold in trust for the use and benefit of any central or high school, or sub-district school in the township, any grant or devise of land and any donation or bequest of money or other personal property, to be applied by the board to the maintenance and support of any such school or schools, according to the intention of the grant or donation.

ACTS REPEALED.

§ 66. That an act entitled "An act to establish the common school system," approved March 16, 1855, and an act entitled "common school" approved January 26, 1856, be and the same are hereby repealed: Provided, that the obligations or liabilities incurred, and the rights acquired under the provisions of the acts hereby repealed, shall remain, and in no wise altered or affected, but may be enforced, as if this act had not been passed; and the school officers in the several school districts of the territory, as now organized shall hold their respective offices and perform their respective duties until the local directors herein provided for shall have been elected and qualified.

(A.)

Form of Report for Township Board.

*88 Names of sub- districts.	No. of children be- tween 5 and 21 years of age, re- siding in the sub-district.		No. of children who have attend- ed school the past year.		No. of teachers.		No. of Schools.	Days School has kept.	No. of vols. in library.	Val. of Apparatus.	Val. of School-House.	School-Books used.
	Males.	Females.	Males.	Females.	Males.	Females.						
Sub-district No. 1,												
do No. 2,												
do No. 3,												
do No. 4,												
Total, ...												

(B.)
Receipts.

Amount of dollars on hand at date of report.	From Territorial funds.	From Township tax.	From Rate bills.	From all other sources.	Total.

(C.)
Payments.

For Teachers' wages.	For libraries and apparatus.	For school houses and sites.	For all other inci- dental purposes.	Amount on hand to date of report.	Total.

(D.)

Form of County Report to Territorial Commissioner.

Names of Township Districts.	No. of children between 5 and 21 years of age residing in the Town. District.		No. of children who have attended school the past year.		No. of Teachers.		No. of schools.	No. of school houses.	Days school has kept.	Average attendance.	No. vols. in library.	Value of apparatus.	No. of select schools.	Text-books used.
	Males.	Females.	Males.	Females.	Males.	Females.								
Town. Dis't No. 1, ...														
Total, ...														

(E.)

Receipts.

Names of Township Districts.	Amount of dollars on hand at date of report.	From Territorial fund.	From Township tax.	From Rate bills.	From all other sources.	Total.
Town. Dist. No. 1, ..						
Total, ...						

(F.)

Payments.

Names of Township Districts.	For teachers' wages.	For school houses and sites.	For books and apparatus.	For all other incidental expenses.	Amount on hand to date of report.	Total.
Town. District No. 1						
Total, ...						

PART THIRD.



SPECIAL LAWS.

AN ACT

To Restrain Cattle, Sheep, Horses and Swine from Running at Large in the Counties of Platte and Monroe, Dodge and Hall.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That from and after the first day of April, A. D. 1859, cattle, sheep, horses and swine shall be restrained from running at large in the counties of Platte, Monroe, Dodge and Hall.

§ 2. That all damage to property committed by such stock so running at large shall be paid by the owner of said stock, and the person whose property is damaged thereby, may have a lien upon said trespassing animals, for the full amount of damages and costs, and may enforce and collect the same by the proper civil action.

§ 3. That when any such stock shall be found upon the premises of another, it shall be lawful for the owner or person in possession of said premises to impound said stock, and if the owner of said stock can be found and is known to the taker up it shall be the duty of said taker up to notify him by personal service, or by leaving a written notice at his usual place of residence, with some member of his family, over the age of fourteen, of the taking up of said stock, describing it, and requiring him forthwith to take the said property, after first making full payment of all damages and costs to the said taker up.

§ 4. In case the parties can not agree as to the amount of damages and costs; each party may choose a man, and in case the two men chosen can not agree, they shall choose a third man, who after being duly sworn for the purpose within, the three shall proceed to assess the damages, possessing for that purpose the general power of arbitrators.

§ 5. The said arbitrators shall make an award in writing which after being filed with any justice of the peace in the same county shall operate as a judgment at law in the said court, subject to an appeal as in other cases in said court, and in other respects, except as herein otherwise changed; shall be considered the same as a judgment in said

court, and execution may issue for the collection of said damages and costs as in other cases.

§ 6. In case the owner of said stock is not known and can not be found as herein set forth, the taker up of said stock shall proceed with the same as in the case of estrays.

§ 7. That it shall be the duty of Charel Bremmer of Platte, Mich. Schmith of Monroe, E. H. Rogers of Dodge, and Frederick Hidde of Hall counties, to procure each of them one copy of this act and forward the same to the clerks of their respective counties, whose duty shall be to post up this act at all the places at which an election was held at the last election, on or before the fifteenth day of March, A. D. 1859.

§ 8. And be it further enacted, that should any of the citizens of Platte, Monroe, Dodge and Hall counties feel aggrieved by the passage of this act, they may induce an election to be held in said counties to determine whether a majority of the legal voters of said counties are in favor of this act; if at such election a majority of all the votes cast shall be opposed to the provisions of this act, then and in that case it shall be null and void. A petition for said election must be presented to the county clerk, signed by one-fourth of the voters of said county, and said clerk shall properly advertise and provide for said election to be held at as early a day thereafter as practicable.

Approved October 30, 1858.

AN ACT

To Confirm the Title of Francis Barker to certain Real Estate in the City of Omaha, in the Territory of Nebraska.

§ 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all actions at law and in chancery, brought for any cause whatever, for the purpose of setting aside, impairing, canceling, or in any manner affecting the validity of a certain deed of conveyance executed by George Armstrong, mayor, for the city council of the city of Omaha, to Francis Barker of said city of Omaha, dated October 8, A. D. 1858, and recorded in the office of the register of deeds of the county of Douglas and Territory of Nebraska, in book K, page 218, of the following described real estate, to wit: Lot eight (8) block E, as designated on the latest edition of the map of Omaha, published by Messrs. Poppleton & Byers of Omaha city, the said lot being in said city, in the county of Douglas and Territory of Nebraska, and being part of the property sold by said city of Omaha, at public auction, for the purpose of obtaining money to aid in completing the cotton building of said territory, in said city; shall be brought within six days after the passage of and approval of this act, or the said action and the cause thereof shall be forever barred.

§ 2. The said deed of conveyance described and set forth in section one of this act, is hereby declared to be a strict, full and complete conveyance.

pliance with the provisions of an act of congress, passed and approved May 23, A. D. 1844, and entitled "an act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," and also with the provision of an act of the legislative assembly of the Territory of Nebraska, passed and approved February 10, A. D. 1857, and entitled "an act regulating the disposal of lands purchased in trust for town sites," and the event arising under said act in respect to said real estate in said George Armstrong, mayor of said city of Omaha, as aforesaid, as entered in trust for the use and benefit of the owners and occupants thereof, is hereby declared to have been faithfully, impartially, legally and equitably fulfilled and consummated in every particular by such deed of conveyance of the same, is hereby ratified and confirmed.

§ 3. This act shall take effect and be in force from and after its passage.

Approved November 2, 1858.

AN ACT

To Dissolve the Bonds of Matrimony between James B. Hickman and Salina H. Hickman.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the bonds of matrimony between James B. Hickman and Salina H. Hickman, be and the same are hereby dissolved.

§ 4. This act shall take effect from and after its passage.

Approved November 3, 1858.

AN ACT

For the Relief of Levi Harsh, Mayor of the City of Florence.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all deeds to lots and lands in the city of Florence, heretofore made and executed by Levi Harsh, as mayor of said city, shall be and the same are hereby declared to be legal and valid, except so far as relates to the equitable rights of others than those to whom such deeds may have been given.

§ 2. This act to take effect, and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Dissolve the Bonds of Matrimony between Mary Burton and John N. Burton.

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska,* That the bonds of matrimony between Mary Burton and John N. Burton, be and the same are hereby dissolved; and that the said Mary Burton shall, by virtue of this act, be allowed retain possession and control of her infant child, begotten in marriage with the said John N. Burton.

§ 2. This act shall in all respects have the same force and effect upon and between the said parties, as the decree of any competent tribunal in the premises would, had the same been brought before it.

§ 3. This act shall take effect and be in force from and after passage.

Approved November 4, 1858.

AN ACT

To Legalize the Collection of Taxes in the County of Cass, for Year 1857.

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska,* That the collection of school, road and county taxes, assessed and levied for the year 1857, in the county of Cass hereby made and declared lawful, the same as though the levying said taxes in said county, in the year aforesaid, and all other necessary to make the collection of said taxes by the treasurer of county lawful, had been done in exact accordance with the law now and provided for in such cases.

§ 2. This act to take effect and be in force from and after passage.

Approved November 4, 1858.

AN ACT

To Change the Name of Charley Shepherd to Charley Ford

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska,* That it shall be lawful for the person now living in the county of Dakota in said territory, and bearing the name Charley Shepherd, to change said name to Charley Ford.

§ 2. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

ROAD LAWS.

AN ACT

To Establish a Territorial Road from Covington, in Dakota County, through Crawford, on the Elkhorn, to a Point upon the Platte River, on the Road from Omaha City to Fort Laramie.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Thomas L. Griffey, Harlan Baird and Robert G. Alexander, be and are hereby appointed commissioners to view and locate a territorial road on the most practicable route from Covington in Dakota county, through Crawford on the Elkhorn, to a point upon the Platte river, on the road from Omaha city to Fort Laramie.

§ 2. That said commissioners shall meet at Covington, on the first Monday in May, A. D. 1859, or within twenty days thereafter, and proceed to locate and establish said road, and their compensation shall be three dollars per day for the time actually employed therein; and the said commissioners shall, if necessary, employ a surveyor and other assistants, who shall be paid a reasonable compensation for their services, and shall cause to be made a plat of said road, and file the same in the office of the county clerk of the respective counties through which the road passes.

§ 3. That the cost of laying out and establishing said road shall be paid by the respective counties through which said road passes, in proportion to the length of the road in each county.

§ 4. This act to be in force from and after its passage.

Approved October 20, 1858.

AN ACT

For an Act to Locate and Establish a Territorial Road from Nebraska City to Salem.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John Cassel of Otoe county, Elijah Ried

of Nemaha county, and Arnett Roberts of Richardson county, be and they are hereby appointed commissioners to view and locate a territorial road from Nebraska city in Otoe county, to Salem in Richardson county.

§ 2. The above named commissioners, or any two of them, shall meet at Nebraska city, on or before the first day of June, 1859, and after taking an oath, faithfully and impartially to discharge their duties defined in this act, shall proceed to survey and mark said road by suitable permanent stakes, commencing where the section line between sections sixteen and seventeen, in township eight north, of range fourteen east, intersect the town plat, and running thence south on section line as near as the nature of the ground will admit to the south boundary of Otoe county, and thence on the nearest and best route to Salem in Richardson county, by way of the bridges on the Little Nemaha and Muddy creek.

§ 3. The said commissioners are hereby authorized to employ a surveyor and other necessary assistants to carry out the provisions of this act, and as soon as practicable after completing the survey of said road, the commissioners and surveyor shall make out and return to the county clerks of each county through which said road shall pass, certified plats and field notes of that portion of said road pertaining to each county respectively, which field notes and plats shall be filed and preserved by said clerks.

§ 4. The said commissioners shall receive three dollars per day for the time necessarily employed in locating said road, and all assistants necessarily employed shall be paid such wages as the board of county commissioners may allow, which shall be allowed and paid as other claims by the several counties in proportion to the distance said road shall pass through the same.

§ 5. When the return, provided for in section three of this act, shall have been made, said road shall be deemed in law, as established, and shall be regarded and treated in all respects as other roads established by law.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 25, 1858.

AN ACT

To Locate a Territorial Road.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That J. G. Tredway, Jacob Snell and Jacob Johnson be and they are hereby appointed commissioners to locate a territorial road from Wyoming, in Otoe county, commencing at the northwest corner of section number 12, township number 9, range number 13, east of 6th p. m.; thence west to the northwest corner of section number 9 in same township; thence westward, by the most practi-*

route, to the west line of Otoe county; thence to some point on Salt creek.

§ 2. Said commissioners shall meet at Wyoming, on or before the first of May, 1859 (one of whom may act as surveyor), and proceed to locate said road, and shall make their returns on or before the first day of June, 1859.

§ 3. That the expenses of said road shall be defrayed by the counties through which it passes, in proportion to the length of the road in each.

§ 4. This act to take effect from and after its passage.

Approved October 26, 1858.

AN ACT

To Locate a Territorial Road from Ponca, Dakota County, to Pacific City, on the Running Water River.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a territorial road shall be located and established as follows: Commencing at Ponca, Dakota county, and running thence, via the villages of Ayoway creek and Elkhorn river, to Pacific city, on the Running Water river.

§ 2. S. B. Stough, Benjamin Sherman and John Cavanaugh, are hereby appointed commissioners to view and locate said road, and shall meet at Ponca on the first Monday of June next, or within three months thereafter, and proceed to locate said road.

§ 3. Said commissioners shall have power to employ all necessary help in the location of said road, and said commissioners shall be entitled to three dollars per day while engaged in the location of said road, to be paid by the counties through which the road is located.

§ 4. This act to take effect and be in force from and after its passage.

Approved October 26, 1858.

AN ACT

To Locate a Territorial Road from Nebraska City to Plattsmouth.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That J. H. Maxon, Jacob Dawson and G. D. Connelly, be and they are hereby appointed commissioners to locate a territorial road from Nebraska city, Otoe county, by way of Wyoming and Rock Bluffs, to Plattsmouth, in Cass county, Nebraska Territory, and thence to the Platte river at the most practicable point.

§ 2. That said commissioners, or a majority of them, shall meet on or before the first Monday in April, 1859, at Nebraska city, and proceed

to locate said road; and shall make their return according to law on before the 1st day of June, 1859.

§ 3. Said commissioners shall each be allowed three dollars per day for the time necessarily employed in locating said road, and shall have power to employ as many assistants as may be necessary in locating said road, who shall be allowed two dollars per day while employed (except surveyors).

§ 4. One of said commissioners may act as surveyor, if the others choose to appoint from their number.

§ 5. The expenses of said road shall be paid by the counties through which it passes, in proportion to the length of the road in each.

§ 6. This act to be in force from and after its passage.

Approved October 26, 1858.

AN ACT

To Establish a Territorial Road from Rulo to Blue Springs.

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska*, That Thomas Fosterin and John W. Brinegar of Richardson county, and John P. Sutton of Pawnee county, be and are hereby appointed commissioners, to locate and establish a territorial road from Rulo, in Richardson county, by the way of Falls city and Salem in said county; Pawnee city in Pawnee county, to Blue Springs in Gage county; thence in a westerly direction till it intersects military road running from Fort Leavenworth to Fort Kearney.

§ 2. That said commissioners, or any two of them, shall meet on before the first day of June next, at Rulo, in Richardson county to locate and establish said road in accordance with this act.

§ 3. That said commissioners shall receive each, together with their assistants, the sum of three dollars per day while engaged in locating said road, and shall have power to employ all necessary help in locating and establishing said road.

§ 4. That all reasonable expenses incurred in accordance with this act, shall be defrayed by the counties through which the road shall pass.

§ 5. That said commissioners shall, within thirty days after locating said road, make a report of their doings, and furnish a map of said road to the clerks of the several counties through which the road may pass, who shall file the same in their respective offices.

§ 6. This act to take effect and be in force from and after its passage.

Approved October 26, 1858.

AN ACT

To Establish a Territorial Road from Bellevue to Forest City in Sarpy County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That a territorial road shall be located and established as follows, to wit: commencing at Bellevue and running thence to Forest city in Sarpy county.

§ 2. Robert Hamilton, Barney Scott and John Seaton, are hereby appointed commissioners to locate said road.

§ 3. It shall be the duty of the said commissioners to meet at Bellevue on or before the 15th day of May next, and proceed with a competent surveyor and other necessary help to locate said road.

§ 4. The said commissioners shall make a report of the location of said road, to be subscribed by them or a majority of them, and cause a copy of the same to be filed in the office of the register of deeds of Sarpy county, on or before the first day of June next.

§ 5. The said commissioners and surveyor shall receive three dollars per day, each, for their services, and their assistants two dollars per day each, which shall be paid by the county of Sarpy in the same manner as other county expenses are paid.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 29, 1858.

AN ACT

To Locate and Establish a Territorial Road from Peru, Nemaha County, to the Kansas Line, in Richardson County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That J. D. N. Thompson of Nemaha county, A. M. Barnes and George H. Halter of Richardson county, be, and are hereby, appointed commissioners to locate and establish a territorial road, commencing at Peru, in Nemaha county, running southwardly, via Brownville, Nemaha city, Archer, Falls city, and Nemaha falls to the Kansas line, in Richardson county, Nebraska territory.

§ 2. Said commissioners, or any two of them, shall meet at Peru, in Nemaha county, on or before the first Monday in May next, and proceed to lay out and establish said road, in accordance with the provisions of this act.

§ 3. The said commissioners shall have power to employ a competent surveyor and as many other persons as shall be necessary to survey and locate the said road, each of whom shall be entitled to receive three dollars per day, to be paid by the said counties in equal proportions, for every day they shall be actually engaged in locating the said road, and making out the returns as hereinafter required.

§ 4. After the road has been duly located, and the survey there completed, the commissioners shall make out and sign a report of the proceedings, showing the location of the road, and shall file a copy of the same for record, in the office of the register of deeds of each of said counties.

§ 5. This act to take effect and be in force from and after its passage.
Approved October 30, 1858.

AN ACT

For the Appointment of Road Commissioners.

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska,* That E. B. Hamilton and O. W. Thomas of Washington county, and Samuel Frances of Dodge county, be, and they are hereby appointed road commissioners, whose duty it shall be to meet on the first Monday of November next, or within thirty days thereafter, at the Cuming City landing, on the Missouri river, in Washington county, and from thence proceed to stake out a territorial road to Fontenelle, Dodge county.

§ 2. Commissioners shall, before entering on the discharge of their duties assigned them, take an oath before some officer authorized to administer oaths, faithfully to discharge the duties assigned to them by this act.

§ 3. The commissioners aforesaid shall appoint a surveyor, and chain carriers, and hire a wagon and one driver.

§ 4. It shall be the duty of the surveyor to survey the route designated by the commissioners, to make out two plats of said road, to deposit one of said plats, together with the field notes, in the office of the clerk of Washington county, and one with the field notes in the office of the clerk of Dodge county.

§ 5. It shall be the duty of the county commissioners of each county through which said road may pass, to open and keep the same in order to the width of sixty (60) feet, and for that purpose they shall appoint overseers and allot a sufficient number of hands.

§ 6. The commissioners appointed by this act, as well as the chain carriers, shall each receive three dollars per day for each day they be employed, and the surveyor shall receive four dollars per day for each day employed in surveying and platting said road, and four dollars per day shall be allowed for one wagon and driver, all of which shall be paid by the counties through which said road may pass in proportion to the time occupied in each county.

§ 7. This act to take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Establish a Territorial Road from Omaha City, in Douglas County, to Fontenelle, in Dodge County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That J. M. Thayer of Douglas county, John S. Bowen and Samuel D. Prescott of Dodge county, shall be commissioners to locate a territorial road from Omaha to Fontenelle.

§ 2. The above named commissioners, or any two of them, shall meet at Omaha, on the 15th day of November, 1858, or within six months thereafter, and after taking an oath to faithfully discharge the duties of commissioners, they shall proceed to survey and mark by suitable stakes, a road eighty feet wide as provided for in section one of this act; and one of the said commissioners may act as surveyor for said road.

§ 3. As soon after said commissioners have completed said road as may be practicable, the surveyor shall make out and return to the county clerk of each county through which said road shall pass, certified plats of that portion of said road pertaining to each county respectively, which shall be filed and preserved by said clerks.

§ 4. Said commissioners shall receive three dollars per day for the time necessarily employed in locating said road, and all assistants they may require, shall be paid such wages as the board of county commissioners may allow, which shall be paid by the several counties in proportion to the distance said road shall pass through the same.

§ 5. When the return, provided for in section three, shall have been made, said road shall be deemed in law as established, and shall be regarded and treated in all respects as other roads established by law.

§ 6. This act shall take effect immediately.

Approved November 1, 1858.

AN ACT

To Locate a Territorial Road from Omaha City, by way of Hazleton, to Forest City, in Sarpy County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That H. S. Mundy, Matthew Shields and George McKenzie, be and are hereby appointed commissioners to locate and establish a territorial road, commencing at the city of Omaha, in Douglas county, and running thence, on the most practicable route, through the town of Hazleton, to Forest City, in Sarpy county.

§ 2. That said commissioners, or a majority of them, shall meet in the city of Omaha, on the first Tuesday of December, 1858; and when thus met, shall take an oath before some person duly qualified to administer the same, to faithfully and impartially perform the duties of commissioners on said road.

§ 3. Said commissioners shall have power to employ a surveyor, and such assistants as may be necessary for assisting in the laying out of

said road, and shall, within twenty days after the close of the survey, cause a plat of said road to be made and recorded at the office of the secretary of the territory.

§ 4. Said commissioners shall receive compensation for their service in laying out said road, at the rate of three dollars per day for the time so engaged; and the surveyor shall be allowed four dollars per day, and the assistants shall be allowed at the rate of two dollars per day on which several amounts shall be allowed by the county commissioners and paid on their orders from the county treasuries of Douglas and Sarpy counties, in proportion to the length of road located in each of the said counties.

§ 5. This act to take effect and be in force from and after its passage.
Approved November 1, 1858.

AN ACT

To Establish a Territorial Road from Bellevue, Sarpy County, to Hazleton, to Elkhorn City, Douglas County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a territorial road shall be located and established as follows, to wit: Commencing at Bellevue, in Sarpy county, and running thence via Hazleton to Elkhorn city, in Douglas county.

§ 2. Robert Hamilton, Samuel N. Mahan and Robert McCarty, hereby appointed commissioners to locate said road.

§ 3. It shall be the duty of the said commissioners to meet at Bellevue on or before the 15th day of May next, and proceed with a competent surveyor and other necessary help to locate said road.

§ 4. The said commissioners shall make a report of the location of said road, subscribed by them, or a majority of them, and cause a copy of the same to be filed in the office of the register of deeds of each county through which the said road shall pass, on or before the first day of June next.

§ 5. The said commissioners shall receive three dollars per day each for their services; the said surveyor shall also receive three dollars per day, and his assistants two dollars per day each, which shall be paid equally by the counties of Sarpy and Douglas, in the same manner as other county expenses are paid.

§ 6. This act shall take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Locate a Territorial Road from the City of Elkhorn to Papillion Creek at McCordle's.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That William D. Thomas, Jas. McCa

and John A. Steinberger, are hereby appointed commissioners to locate said road.

§ 2. It shall be the duty of said commissioners, or a majority of them, to meet at Elkhorn city, on or before the first Monday of May next, and proceed to locate said road.

§ 3. Said commissioners shall have power to employ all necessary help for the location of said road, and that said commissioners be paid at the rate of three dollars per day while necessarily engaged in making the said location.

§ 4. That the expenses incurred in carrying out the provisions of this act be paid by Douglas county.

§ 5. This act to take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Locate a Territorial Road from Peru to the Kansas Line, near Marysville, Kansas Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Rowen Irwin of Johnson county, and T. E. Haycock and Joseph Lash of Nemaha county, be and they are hereby appointed commissioners to locate a territorial road from Peru, Nemaha county, by way of Tecumseh, Johnson county, to the Kansas line at or near Marysville, Kansas territory.

§ 2. That said commissioners, or a majority of them, shall meet at Peru, on or before the first Monday of May, 1859, and proceed to locate said road, and shall make their return according to law on or before the first day of July, 1859.

§ 3. Said commissioners shall each be allowed three dollars per day for the time necessarily employed in locating said road, and shall have power to employ whatever assistants may be necessary in locating said road, who shall be allowed two dollars per day while employed (except surveyors).

§ 4. The expenses of said road shall be paid by the counties through which it passes, in proportion to the distance in each county.

§ 5. This act to be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Locate a Territorial Road from Brownville, in Nemaha County, to Kingston, in Johnson County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Jesse Cole, Allen Phillips and William S. Townsend, be and are hereby appointed commissioners to view and

locate a territorial road from Brownville, by way of Glen Rock and Helena, to Kingston, in Johnson county.

§ 2. That said commissioners shall meet at Brownville on the first day of March, A. D. 1859, or within three months thereafter, and proceed to locate and establish said road, and their compensation shall be three dollars per day for the time actually engaged therein. The cost of laying out and establishing said road shall be paid equally by the counties through which the same shall pass.

§ 3. Said commissioners shall make a report of their doings and furnish a map of the same to each of the board of commissioners of the counties through which said road shall pass; all of which shall be filed and recorded by the register of each county.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Locate a Territorial Road from Decatur to Columbus and Cleveland.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That a territorial road shall be located and established from Decatur, in Burt county, to Columbus and Cleveland in Platte county.

§ 2. Stephen Decatur, George W. Mason and Frank Welch of Burt county, W. R. Artman of Cuming county, and John Reck of Platte county, are hereby appointed commissioners to run and locate the said road.

§ 3. It shall be the duty of the said commissioners to meet at Brownville hotel, in Decatur, on the third Monday of April next, or within ten days thereafter, and proceed with competent surveyors to locate the said road, and any three of the said commissioners shall, if the others fail to attend on the day appointed, be authorized to locate the road.

§ 4. At least forty (40) miles of the said road westward from Decatur shall be located within four months after the third Monday of April next, and if within the time limited the said road shall be, by the said commissioners, surveyed and located to the distance of forty miles; then the said road shall be permanently established, and the said commissioners shall have and be allowed until the first day of January 1860, to complete the location of said road to Columbus and Cleveland.

§ 5. The said commissioners shall make a report of the location and boundaries of the said road, or of so much thereof as may be located, within four months after the third Monday of April next, which report shall be subscribed by the commissioners acting, or a majority of them; they shall cause a copy of the same to be filed in the office of the register of deeds of each county through which said road shall pass, on or before the first day of October next, and of the remainder of the said road, which may be located after the time first limited, they shall

a report and subscribe the same as above prescribed, which report shall be filed in the office of the register of deeds of each county through which the road shall pass, on or before the first day of March, eighteen hundred and sixty.

§ 6. The said commissioners shall receive three dollars per day each for their services, which sum, together with all other necessary expenses of the said location, shall be paid proportionally by the several counties (according to the number of miles in each county) through which said road shall pass; and it shall be the duty of the proper officers of each county through which the road shall pass, to assess, levy and collect a tax to defray all such costs and expenses and pay the same to the said commissioners as soon as practicable after the survey and plat of the road are filed as hereinbefore prescribed in the proper offices.

§ 7. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

Entitled an Act to Locate a Territorial Road from Ionia in Dixon County to Fontenelle in Dodge County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That A. B. Denton, S. B. Slough, H. C. Campbell and Lewis Cunningham, be, and they are hereby appointed commissioners, to mark, survey and establish a territorial road from Ionia, Dixon county, to Fontenelle, Dodge county.

§ 2. Said commissioners, or a majority of them, shall meet at Ionia, on the first Monday of May next, or within three months thereafter, and proceed to lay out and establish said road, and their compensation shall be three dollars per day, for the time actually employed therein and all necessary expenses.

§ 3. The cost of establishing said road shall be paid by the respective counties through which it shall pass.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Locate a Territorial Road.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That a territorial road shall be located and established as follows: From Aspinwall in Nemaha county to the northeast corner of the northwest quarter of section seven, in township

three (3), range fourteen, in Richardson county, from there to Franklin, thence to Pawnee city in Pawnee county.

§ 2. That Nathan Myers, Daniel Shadley and Eben Jordan, hereby appointed commissioners to view and locate said road.

§ 3. It shall be the duty of said commissioners to meet at Aspinwall on the first Monday in April next or within one month thereafter and proceed, with a competent surveyor and other necessary help, to locate said road.

§ 4. The said commissioners shall make a report of the location and boundaries of said road to be subscribed by them or a majority of them, and cause a copy of the same to be filed in the office of the register of each county through which said road passes.

§ 5. The said commissioners shall receive three dollars per diem each, for their services, and all other reasonable and necessary expenses for surveying, &c., incurred in carrying out the provisions of this act shall be paid out of the treasury of the counties through which said road shall pass, as soon as practicable after the survey and report of said road are filed in the register's offices in the said counties through which said road passes.

§ 6. This act to take effect from and after its passage.

Approved November 4, 1858.

AN ACT

To Locate a Territorial Road from Florence to the Bridge on Little Papillion.

SEC. 1. *Be it enacted by the Council and House of Representatives of Territory of Nebraska*, That Benjamin P. Knight, Charles Howe and S. Bryant, are hereby appointed commissioners to locate and establish a territorial road, beginning at Florence, in Douglas county, and ending to the bridge on the little Papillion where the military road crosses the same.

§ 2. Said commissioners, or a majority of them, shall meet in the town of Florence, on or before the first Monday of May next, and proceed to locate and establish said road, on the nearest and most practicable route, in accordance with the provisions of this act.

§ 3. That said commissioners shall receive the sum of three dollars per day, and shall have power to employ a surveyor and all necessary help to lay out and establish said road.

§ 4. The expenses incurred in locating and establishing said road shall be paid by the county through which it passes.

§ 5. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Locate a Territorial Road from Decatur to Niobrara.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Silas T. Leaming, Thomas F. Whitacre and Charles F. Porter of Burt county, be and they are hereby appointed commissioners to locate and establish a territorial road, commencing at the city of Decatur, in Burt county, and running thence on the most practicable route to Niobrara, at the mouth of the Running Water river.

§ 2. The said commissioners, or a majority of them, shall meet at Decatur, on the third Monday of May next, or within sixty days thereafter; and after being sworn by an officer authorized to administer oaths, faithfully to perform their duties as commissioners, shall proceed to survey and make the said road; and they shall have power to employ a surveyor, carriers and laborers, necessary to complete the survey and location of the road.

§ 3. Within three months after the survey and location of said road, the commissioners shall make or cause to be made a plat of said road, and file a copy of the same in the office of the register of deeds, in each of the counties through which said road is located; and when the plats are filed the road shall be permanently established.

§ 4. Said commissioners shall receive three dollars per day each, the surveyor four dollars per day, and the carriers and laborers not more than two dollars per day, for the time actually employed, which, together with all the necessary expenses and costs, shall be paid proportionally by the counties through which the road is located, whenever the commissioners shall present to the county commissioners of each of the respective counties an account of all such wages, costs and expenses.

§ 5. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Locate and Establish a Territorial Road from St. Stephens; Richardson County, to Intersect the Military Road leading from Fort Leavenworth to Fort Kearney.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That James Buchanan and A. J. Deshaze of Richardson county, and ——— Sanford of Pawnee county, be and they are hereby appointed commissioners to locate and establish a territorial road from St. Stephens, Richardson county, via Falls city, Geneva, Tall Rock and Beatrice, to intersect the military road leading from Fort, Leavenworth to Fort Kearney.

§ 2. The said commissioners, or any two of them, shall meet at St.

Stephens, in Richardson county, on or before the first day of June next, and proceed to locate and establish said road in accordance with the provisions of this act.

§ 3. The said commissioners shall have power to employ as many persons as shall be necessary to survey and locate the said road, each of whom shall be entitled to receive three dollars per day for every day they shall be necessarily employed in making the survey and locating the said road, and a report of their proceedings had thereon.

§ 4. The commissioners aforesaid shall make, or cause to be made, a correct report of the proceedings had, showing the location of the road, which shall be signed by them and certified to by the surveyor employed for that purpose. When so signed and certified, a copy of the same shall be filed for record in the office of the register of deeds in each county through which the road shall pass.

§ 5. The organized counties through which the road passes shall pay the expenses incurred in making the survey and location, in equal portions. On the presentation of the accounts, properly authenticated to the county commissioners of the respective counties, they shall draw orders on the county treasurer in favor of each person employed for the amount due him.

§ 6. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

PART FOUR.

INCORPORATIONS.

AN ACT

To Incorporate Columbus, in Platte County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all the territory within the geographical limits of Columbus, in Platte county, Nebraska territory, as the same is designated upon the plat of said town, together with all the additions that may be hereafter made thereto according to law, is hereby declared to be a town by the name of Columbus.

§ 2. The qualified electors of said town shall on the first Monday of June, 1859, and annually thereafter, elect a mayor and three aldermen, a recorder, treasurer and marshal, who shall serve for the term of one year and until their successors are elected and qualified.

§ 3. The said town of Columbus is hereby made a body corporate, and is hereby invested with the same powers and corporate rights and privileges as are granted in an act entitled "an act to incorporate Nebraska city," approved March 2, 1855.

§ 4. And be it further enacted, that all the land laying one mile north and one mile east of the town of Columbus, shall be incorporated within the limits of said town for revenue, judicial and election purposes.

§ 5. This act shall take effect from and after its passage.

Approved October 2, 1858.

AN ACT

To Incorporate the Otoe County Horticultural Society.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That George Edwards, James H. Masters, Joel

Draper, Augustus F. Harvey, J. H. Gregg, E. Adams, William H. McArty, ——— Mayhew and ——— Welch, and their associates and successors be and they are hereby declared to be a body corporate, capable in law of contracting and being contracted with, suing and being sued, pleading and being impleaded in the courts of this territory, and may purchase, acquire by donation or otherwise, real estate for fair exhibition grounds not exceeding forty acres, and may sell or convey the same or any part thereof, and to reinvest the same as the board of managers may direct.

§ 2. The purposes of this corporation are hereby declared to be the encouragement of the growth of and improvement of fruits, ornamental shrubbery, garden vegetables and flowers, and the introduction, propagation and sale of new varieties of the same.

§ 3. At least five of the incorporators shall meet at Nebraska City, Otoe county, Nebraska Territory, on or before the first day of May, 1859, and proceed to organize said society by electing a president, secretary, treasurer and board of managers, and adopt a constitution and by-laws for the government of said society, not inconsistent with law of this territory.

§ 4. As soon as practicable after the election provided in the preceding section the society shall open a book of membership in any manner and form to be prescribed by the board of managers, and any person being a citizen of Otoe county who shall subscribe his name in said book, and pay to the treasurer of said society the fee provided in the constitution aforesaid shall be a member of said society and entitled to vote at any and all elections of said officers of said society.

§ 5. This corporation shall have perpetual succession until repealed by law.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 18, 1858.

AN ACT

To Incorporate the Town of North Bend, Dixon County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all the territory within the geographical limits of the town of North Bend, as designated upon the plat of said town, not exceeding three hundred and twenty acres, is hereby declared to be a town, by the name and style of North Bend.

§ 2. The said town is hereby made a body corporate and politic and is hereby invested with the same powers, corporate rights and privileges as are granted in "an act to consolidate the corporations of Nebraska city, South Nebraska city, and Kearney city, and to incorporate Nebraska city, approved December 31, 1857."

§ 3. This act to take effect from and after its passage.

Approved, October 19, 1858.

AN ACT

To Incorporate the Town of Wacapana, Cedar County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the territory within the geographical limits of the town of Wacapana, as designated upon the plat of said town, not exceeding three hundred and twenty acres, is hereby declared to be a town, by the name and style of Wacapana.

§ 2. The said town is hereby made a body corporate and politic, and is hereby invested with the same powers, corporate rights and privileges as are granted in "An act to incorporate the town of Omadi, in Dakota county, approved December 31, A. D. 1857."

§ 3. This act to take effect from and after its passage.

Approved October 19, 1858.

AN ACT

To Incorporate the Town of St. Helena.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the territory within the geographical limits of the town of St. Helena, as designated upon the plat of said town, is hereby declared incorporated under the name and style of St. Helena.

§ 2. The said town is hereby made a body corporate and politic, and is hereby invested with the same powers, and corporate rights and privileges, as are granted in "an act to incorporate the city of St. John, approved February 13, 1857."

§ 3. This act to take effect from and after its passage.

Approved October 20, 1858.

AN ACT

To amend An Act entitled "An Act to Incorporate the City of Plattsmouth, approved March 14, 1855."

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the legislative power of the city of Plattsmouth shall consist, at the next city election, of five members.

§ 2. This act to be in force from and after its passage.

Approved October 20, 1858.

AN ACT

To amend An Act entitled "An Act to amend an act Incorporating the Town of Brownville, approved February 9, 1857."

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That hereafter the annual election of officers of the city of Brownville, as provided for in an act approved February 9, 1857, shall be held in the same manner as therein provided on the Monday of April in each year. The officers elected at such election shall serve for one year, or until their successors are elected and qualified.

§ 2. The officers elected at the election next preceding the passage of this act, are hereby made to serve until the next annual election provided for in section first of this act.

§ 3. The city council of said city of Brownville, are hereby further empowered with exclusive authority to provide for the license or prohibition of all ball alleys, or other bowling or billiard saloons; also the sale of malt, vinous and spiritous liquors: Provided, that no license for the sale of spiritous liquors shall be granted for a less sum than twenty-five dollars, nor for less term than one year: And provide further, that the applicant shall give bonds to the amount required by the council, in any sum not less than one thousand dollars. All matters arising under the provisions of this section, shall belong exclusively to the school fund of the school district in which said city of Brownville is or may be located.

§ 4. This act to take effect from and after its passage.

Approved October 20, 1858.

AN ACT

To Incorporate the City of Dakota.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following described territory, being the east half of section eight, section nine and fractional section ten of township number twenty-eight, north of range nine, east of the principal meridian, and situated in the county of Dakota, and territory of Nebraska, together with all the additions that may hereafter be made thereto according to law, is hereby declared to be a corporation by the name of the "City of Dakota," and the east line of said territory shall extend to the middle of the main channel of the Missouri river.

§ 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend, in any court of record, and any other place whatsoever, may have a common seal, and may alter it at pleasure. It may take, hold, purchase, lease, convey and dispose of any real or personal or mixed estate for the use of said corporation.

§ 3. The legislative authority of the city is hereby vested in

council, consisting of a mayor and a board of aldermen composed of five members.

§ 4. Every legal voter of the territory who shall have been a resident of said city sixty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

§ 5. The election of the city officers shall be conducted in a manner similar to township elections, as near as the nature of the case permits.

§ 6. A person offering to vote may be challenged, as in other elections of the township, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

§ 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding his election.

§ 8. That the qualified electors of said city shall on the first Monday of February, 1859, elect a mayor and five aldermen, a recorder, assessor, treasurer and marshal, and the mayor and aldermen so elected when assembled together and duly organized shall constitute the city council, a majority of whom shall constitute a quorum for the transaction of business; they shall be elected for the term of one year and until their successors are elected and qualified.

§ 9. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished, to superintend and direct the official conduct of subordinate officers, to sign and seal all commissions, licenses and permits granted by the city council, and to perform such duties, and exercise such powers, as pertain to the office of mayor of a city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

§ 10. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with the exclusive original jurisdiction, for the violation of the city ordinances, and with criminal jurisdiction of offences against the laws of the territory committed within the city, and with civil jurisdiction limited to the city, in the same manner as that of justices limited to townships; he shall not be disqualified from acting in such judicial capacity, by any proceedings being in the name, or in behalf of the city.

§ 11. Appeals to the district court in the same county shall be allowed from the judgment and decisions of the mayor in the same cases, time and manner, as may at any time be allowed by law, from those of other justices, and they shall be tried as in other cases; and he will be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace. He shall be the presiding officer of the city council when present, and shall give the casting vote when there is a tie; and in his absence the council may appoint a president for the time being from their own body.

§ 12. The council shall be the judge of the qualifications and election of its own members, it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members, in such manner and by such penalties, as it may adopt.

§ 13. The marshal shall be a conservator of the peace, and is the execu-

tive officer of the mayor's court, and shall execute and return processes directed to him by the mayor, and in cases for the violation of the city ordinances and of the criminal laws of the territory, execute the same in any part of the county, and he shall have the same authority within the city, to quell riots and disturbances, to prevent crimes and to arrest offenders, that the sheriff has within his county and may in the same cases and under the same penalties, require the aid of citizens, and perform all the duties imposed by the council. The mayor, with the approval of the council, appoint one or more deputies to discharge them, and he shall be responsible for their doings when acting officially. For the services of legal process, he shall be entitled to the same fees as a constable, and for services required by the council such compensation as it may allow.

§ 14. The treasurer, recorder, assessor and marshal shall give bond, perform such duties, and execute such powers, as may be required of them by ordinance, not inconsistent with the law, which bond shall be approved by the council and filed with the mayor.

§ 15. In all elections for city officers, the mayor shall issue a proclamation to the voters of the city, naming the time and place for election, and the officers to be chosen, and cause a copy to be posted at least ten days previous to the day of the election. The polls shall be opened between the hours of eight and ten o'clock in the forenoon and continue open until four o'clock in the afternoon. Within two days after the election the judges of the election shall make out their returns to the president of the city council, who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

§ 16. No member of the city council shall be eligible to any office within the gift of the city council during the term for which he is elected, nor shall he be interested, directly or indirectly, in the performance of any contract, job or work or services to be performed for the city.

§ 17. Ordinances passed by the city council shall be signed by the mayor and attested by the recorder, and before they take effect shall be published at least ten days in one or more newspapers printed in the city. They shall also be recorded in a book to be kept for that purpose, and signed therein by the mayor and attested by the recorder.

§ 18. It is the duty of the recorder to keep a true record of all the proceedings of the city council, and such records shall be open to the inspection of any citizen during business hours.

§ 19. The mayor, aldermen, marshal, recorder, treasurer and assessor shall respectively take an oath to support the constitution of the United States and the laws of this territory, and faithfully and impartially perform their duty to the best of their knowledge and ability; all city officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or the recorder when he is qualified, and in the transaction of the business of the corporation, those officers and the president for the time being shall administer oaths, which shall have the same effect as if administered by other officers authorized therefor.

§ 20. The recorder, marshal and assessor shall receive such fees

the city council shall deem right, not exceeding the amount allowed county or township officers for similar services.

§ 21. The council may hold its meetings as it sees fit, having fixed stated times, or provide the manner of calling them by ordinances; and its meetings shall be public.

§ 22. The council may appoint in such manner as it determines during its pleasure, street commissioners, clerk of the market, city supervisors, health officers, and such other officers as it may deem advisable, and prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

§ 23. When a vacancy occurs in any of the elective offices, the council may fill the vacancy by appointment, until the next election and qualification of the successor.

§ 24. The city council is invested with authority to make ordinances to secure the inhabitants against fire, against violation of the public peace, to suppress riots, gambling and drunkenness, and indecent behavior in public places, and in general to provide for the safety and prosperity and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace, and the laws of the territory relative to carrying into effect a judgment of a justice of the peace imposing a fine, shall be applied to judgments in the above cases.

§ 25. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus, and powers to grant ferry licenses, regulated by law, within the corporate limits of the city.

§ 26. The council may regulate the keeping and sales of gunpowder within the city.

§ 27. The council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows and theatrical performances, billiard table, ball or ten pin alleys, and other saloons; but the above authority extends to no exhibition of a purely scientific character. The city council shall also have power to license and regulate the retailing of intoxicating liquors.

§ 28. The council may make all necessary ordinances in relation to the cleanliness or health of the city, and may require the owners of lots upon which water becomes stagnant, to drain or fill up the same, and in default thereof, after reasonable notice, may cause the same to be done at the expense of the city, and assess the cost thereof on the respective lots, and cause them to be sold by the city collector, as in the case of taxes, and the owners may redeem from such sale as in case of sale for tax.

§ 29. Said council may regulate the system of cartage and drayage, hacks and omnibuses within the city, and may issue licenses therefor, and may prohibit hogs and other animals from running at large within the limits of the city.

§ 30. The council shall provide by ordinance for the keeping of the

public money of the city, and the manner of disbursing the same, shall cause all claims against the city to be audited, and all city officers are accountable to the said city council in such manner as it directs. The council shall publish, annually, a particular statement of receipts and expenditures of the city, and of all debts owing to and the same.

§ 31. The council shall have the exclusive authority to establish the grade of all streets and alleys in the city, and may change the same upon the petition of the owners of two-thirds of the value of the property on both sides of the street, when it is desired to be changed.

§ 32. Imprisonment for the violation of any ordinance shall not exceed fifteen days, and the county jail shall be the place of imprisonment, but at the expense of the city.

§ 33. The city council is authorized to levy and collect taxes, exceeding one half of one per cent on all taxable property within the city, according to the laws of the territory.

§ 34. The marshal shall be collector, or, in case of his absence or inability, such person as the council shall appoint in his stead shall be the collector of taxes, and before proceeding to collect the same, shall give twenty days' notice of the assessment and levy of the tax, the rate thereof in general terms, with a general description of the property, printed in the city.

§ 35. At any time within the time said notice is being published any person aggrieved by the assessment or taxation, may appear before the council, which may correct the same if found erroneous.

§ 36. The tax list shall be made out by the recorder, and the marshal shall indorse thereon an order to the marshal to collect the taxes thereon levied, which shall authorize him to collect the same by levy and sale as on execution.

§ 37. Taxes on real property shall be a lien thereon and it may be enforced therefor when the taxes remain unpaid for six months after publication of notices of the tax.

§ 38. Such sale must be at auction, and there must be thirty days' notice prior to the sale given as above provided for giving notice of assessment and tax. In such sale he who bids to pay the amount for the least quantity of land will be the highest bidder, and the manner of ascertaining the least portion bid for shall be determined by ordinance of the city council.

§ 39. The marshal shall execute and deliver to the purchaser a deed running in the name of the territory which shall have the same force and effect as the deed of the proper county officer, in like circumstances on sale for county taxes.

§ 40. The council shall have the title to and full control of the streets and alleys, public grounds, wharves, squares, parks and commons within the city, and may cause sidewalks to be paved in the same, and they may require owners of lots to pave or repair the same, continuing to their respective lots, and in case of neglect after a reasonable time named in the order the same may be assessed on the contiguous lots, which shall have the same force and effect of a tax levied thereon.

the same shall be sold therefor as for a tax, subject to the same right of redemption.

§ 41. The council are authorized to borrow money for any object in their discretion if at regular or special election under a notice stating distinctly the nature and object of the loan, and the amount thereof as nearly as practicable, the voters of the city may determine in favor of the loan by a majority of two-thirds of the legal votes at said election and the loan can in no case be diverted from the specified object.

§ 42. All road tax which may be paid upon any property in the said city, in lieu of labor or otherwise shall be paid to the proper authorities of said city for the improvement of the streets thereof.

§ 43. Any person being a resident of said city, subject by the laws of the the territory to do work upon roads and highways shall be required to do and perform or cause the same to be done under the direction of the proper authorities upon the streets of said city, or public roads and highways leading thereto, as said authorities may direct, the city council shall supercede the supervisor in all jurisdiction within the corporate limits of said city.

§ 44. The first election under this act shall be called by the probate judge of Dakota county, who shall issue an order for that purpose, at least ten days prior to the day of election, the returns of said election shall be made to the county clerk of said county who shall notify the respective officers of their election, and said election shall be conducted in all respects as is provided by law for the holding of elections for county officers.

§ 45. This act shall take effect from and after its passage, and all acts and parts of acts heretofore passed conflicting herewith are hereby repealed.

Approved October 21, 1858.

AN ACT

To Incorporate the Grand Lodge of the Independent Order of Odd Fellows of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That J. W. Stull, Asa Hunt, A. G. Doom, R. W. Furnas, J. R. Porter and B. Stickles, officers of the Grand Lodge of the Independent Order of Odd Fellows of Nebraska, and their successors in office be and are hereby incorporated by the name of the grand lodge of Nebraska, and by which name they shall be capable of suing and being sued, pleading and being impleaded, in all the courts, the same as natural persons, and with power to hold and convey real and personal property, and to do any and all other things, usually done by corporations, created for the sole purpose of benevolence and odd fellowship: Provided, the real estate of the said corporation shall be limited to land or lots, on which may be erected the hall, temple or other building or buildings, used and occupied by the said independent order of odd fellows.*

§ 4. This act to take effect from and after its passage.
Approved October 22, 1858.

AN ACT

To Incorporate the Cedar Hill Cemetery Company of the City of Omaha.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Frederick Brown, Jesse Lowe, John I. Painter, and their successors, be and they are hereby made a politic and corporate in law, with perpetual succession, under the name and style and title of the Cedar Hill cemetery company of the city of Omaha, and by that name shall be able and capable in law to have and to use a common seal, to sue and be sued, to plead and be impleaded, and to do all such other things as are incident to a corporation.

§ 2. That the Cedar Hill cemetery company shall be able and capable in law to hold as such cemetery ground, intending it only for the purpose, the northeast quarter of northwest quarter of section sixteen, township fifteen, north range thirteen, east of the sixth principal meridian, and to sell and dispose of the same in lots, blocks or other parcels as they shall see fit; and also to have and to hold so much perpetual estate and no more, as may be necessary for the purposes of this corporation, or with the consent of those who now are or may be hereafter proprietors of the ground not granted for burial lots, to assume the management, direction and disposal of the same according to the powers hereinafter granted.

§ 3. That Frederick Brown, Jesse Lowe and John I. Painter, hereinafter named, shall have power to lay out and ornament the grounds, to dispose of and arrange burial lots, and to make such by-laws, rules and regulations, from time to time, for the government of lot holders and visitors to the cemetery, as they may deem necessary.

§ 4. That no streets or roads shall hereafter be opened through the aforesaid lands of the said corporation occupied as a burial ground except by and with the consent of the corporation.

§ 5. That if any person shall open any tomb or grave in the lands of the Cedar Hill cemetery company of the city of Omaha, and continually remove, or attempt to remove, any body or remains therefrom, such person, upon conviction thereof, shall be sentenced to undergo imprisonment in the county jail of the county of Douglas for a term not less than one nor more than five years, and pay a fine not less than five hundred dollars. And any person who shall willfully destroy or mutilate, deface or remove any tomb, monument, gravestone, or other structure placed therein as aforesaid, or shall willfully destroy or break or remove any tree, shrub or plant within the limits of the cemetery, or shall shoot or discharge any gun or other firearms within said limits, shall be deemed guilty of a misdemeanor; and shall, upon conviction thereof before any justice of the peace, according

aggravation of the offense, of not less than five nor more than fifty dollars; or shall on conviction thereof, be punished by a fine as aforesaid, and by imprisonment according to the aggravation of the offense, at the discretion of the said justice of the peace, for a term of not less than six months or more than three years.

§ 6. That every lot in the said cemetery shall be held by the proprietor for the purpose of sepulture alone, transferable with the consent of the said company, and shall not be subject to attachment or execution; and the said cemetery shall be forever exempt from taxation or assessment for any purpose whatsoever, and from attachment or execution.

§ 7. That the price of lots in said cemetery as aforesaid, shall never exceed the sum of twenty-five cents per square foot.

Approved October 22, 1858.

AN ACT

To Incorporate the Nemaha Valley Insurance Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John L. Carson, Luther Hoadley, A. S. Holliday, Isaac T. Whyte, U. C. Johnson, James M. Hughes, Benjamin F. Lushbaugh, Henry W. Mayhew, R. W. Furnas, Robert W. Frame and John Grant, their associates, successors and assigns, are hereby constituted a body corporate and politic, by the name and title of the "Nemaha Valley insurance company," by which name they and their successors shall have perpetual succession, and are made capable in law, of contracting and being contracted with, of suing and being sued, of defending and being defended against, in all courts and places whatsoever, in all manner of actions, and may have a common seal, which they may change at pleasure.

§ 2. The capital stock of said company shall be ten thousand dollars, which may be increased to any amount not exceeding five hundred thousand dollars; and any three of the persons named in section first shall be commissioners to open books for subscription to said stock in such manner, and at such times and places as they may appoint, until five thousand dollars of stock in shares of twenty dollars each, shall be subscribed, and soon thereafter the subscribers shall meet and choose directors, first giving notice of meeting in one or more newspapers in the city of Brownville.

§ 3. The payment of said stock subscribed shall be in the following manner: at the time of subscribing one dollar shall be paid the commissioners on each share, and before the company shall be authorized to issue a policy of insurance, the further sum of ten dollars shall be paid the directors on each and every share, and the balance due satisfactorily secured, payable on demand, any stockholder failing to meet his calls for thirty days after the same shall have been demanded, the directors shall have power to declare said stock forfeited to the company.

§ 4. The corporation hereby created shall have full power and authority to insure all kinds of property against loss or damage by to make all kinds of insurance against loss of property of any kind in course of transportation, whether happening on land or water, and to make all kinds of insurance on lives, and grant annuities, and to make such other insurance as they may deem proper or expedient; to pledge money on real or personal security, and on respondentia and bottomry bonds, and to re-insure themselves against loss on any risks they may take, and generally to do and perform all necessary matters and things connected with these objects or either of them.

§ 5. The affairs of said corporation shall be managed by nine directors, who after the first year shall be elected on the second Tuesday of January, in every year in the city of Brownville, as the board of directors may designate; first giving thirty days' public notice of election. Should anything prevent its taking place as hereby provided, the corporation for that cause shall not be deemed dissolved, and the election may take place as shall be provided by the company's laws, each share being entitled to one vote.

§ 6. The directors regularly chosen by the stockholders of this company, shall as soon as may be hereafter at any annual election, choose out of their body, one person to act as president, and one person to act as vice president. The first named shall preside at all meetings of the board of directors. In case of his absence or death, the vice president shall perform his duties; either of whom with the secretary or actuary shall sign the policies or contracts made by order of the board of directors, which contract shall be valid and binding with or without the seal of said corporation, and such other acts and things as may be prescribed in the company's by-laws. Any director ceasing to be a stockholder forfeits his powers and privileges as a director.

§ 7. The corporation hereby created shall have full power and authority to invest its capital and surplus funds in any funded debt created by or under any law of the United States government, or of any state or territories, or of the city of Brownville, and to sell and transfer the same as the directors may deem for the interest of the corporation, or to loan such of its unemployed money or its funds on such security and security as the directors shall prescribe, to be made available for the line of its ordinary business.

§ 8. The stock of said company shall be considered personal property and shall be transferable according to such rules and under such restrictions as the board of directors may direct: Provided, that the transfer of stocks shall be made except upon the books of the company, which shall specify the date of such transfer, and shall be at all times subject to the inspection of any person interested: And provided further, that no such transfer shall release any stockholder from liabilities existing against said company before the date of such transfer. The directors by their by-laws may also prescribe what number of directors shall form a board competent to transact the business of the company, prescribe what number of clerks or other officers may be necessary, prescribe their duties, titles, salaries and such other things as they may deem proper, always, however, subject to the general laws of the state or territory.

§ 9. Nothing in this act shall be so construed as to give the company the power or privilege of banking.

§ 10. This act to take effect from and after its passage.

Approved October 29, 1858.

AN ACT

To Incorporate the City of Beatrice.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site claimed by the Beatrice town company, upon which the town of Beatrice is located, in Gage county, is hereby declared to be a city corporate, by the name and style of the city of Beatrice.

§ 2. That said city is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules for the benefit and government of said city, as shall from time to time be deemed expedient and proper and consistent with the laws of this territory.

§ 3. Whenever a majority of the legal voters of said city shall signify, in writing, to the judge of probate or any justice of the peace in Gage county, that they desire an organization and an election of city officers, the said judge of probate or justice of the peace shall, within twenty days thereafter, give a written notice, which he shall cause to be posted in at least four of the most public places in said city, which said notice shall contain a statement of the time and place of a meeting of the legal voters of said city of Beatrice, and the object of the meeting.

§ 4. The said officer so calling the said meeting shall preside at the same, and at the time and place so stated, shall call the said meeting to order, whereupon such officers as shall be deemed necessary and proper for the government of said city, may be created by a majority of the legal voters as aforesaid, and said meeting may adjourn from time to time and until such object shall have been accomplished.

§ 5. Immediately after the signification of the legal voters, as provided in section four, the said officer aforesaid shall give written or printed notice, as provided in section three, for the election of such officers as are provided for and decided upon by said meeting, which election shall be the first organization of the said city, and thereafter the election of city officers shall be annually on the first Tuesday in March, and the officers elected as above shall hold their office until the first Tuesday in March succeeding said election, and such offices may at any time be abolished, or new offices created, whenever, at the annual election, a majority of the voters of said city shall so signify by their votes.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 29, 1858.

AN ACT

To Incorporate the Town of West Point, Cuming County.

SEC. 1. *Be it enacted by the Council and House of Representatives Territory of Nebraska*, That the town site claimed by the Nebraska settlement association, upon which the town of West Point is located together with all additions that may be hereafter made thereto according to law, is hereby declared to be a town, by the name and situate of West Point.

§ 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers and pass such laws, ordinances and resolutions for the benefit and government of said town, as shall from time to time be deemed expedient and proper, not inconsistent with the Constitution of the United States, and the laws of this territory.

§ 3. Whenever a majority of the legal voters of said town shall sign in writing to the judge of probate of said county, that they desire the organization and an election of town officers, the said judge shall within ten days thereafter, give a written or printed notice, which shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of the meeting.

§ 4. The said judge of probate shall preside at the said meeting, at which time and place such officers as shall be deemed necessary and proper for the government of said town, shall be adopted by a majority of the legal voters as aforesaid, and said meeting may adjourn from time to time until said object is effected.

§ 5. Immediately after the signification of the legal voters as provided in the last section, the said judge of probate shall give notice, which shall be posted as provided in section three of this act, for the election of town officers as are provided for by the said meeting, which election shall be the first organization of said town; and thereafter such officers may be abolished, or new offices created, as the majority of the legal voters may from time to time direct by their vote, at any town election held hereafter.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 29, 1858.

AN ACT

To Amend an Act entitled "An Act to Consolidate the Cities and Towns of Nebraska City, South Nebraska City, and Kearney City, and to Incorporate Nebraska City," approved December 31, 1857.

SEC. 1. *Be it enacted by the Council and House of Representatives Territory of Nebraska*, That section eighteen of the above entitled

be and the same is hereby amended as follows: "And the mayor shall be required to enter into bond with good and sufficient securities in a sum of not less than three thousand dollars, conditioned for the faithful discharge of his official duties, which bond shall be approved by the city council, and filed with the city recorder.

§ 2. If any elective officer shall remove without the bounds of said city, or shall absent himself from the city for two consecutive months, the city council may declare said office vacant, and proceed to fill the same as provided in section twenty-four of the act to which this is amendatory.

§ 3. The assessment of the taxable property of said city made by J. D. White, city assessor, and G. H. Vick Roy, as deputy assessor, for the year 1858, be and the same is hereby declared to be legal, and the taxes due on such assessment may be collected in the same manner as if the assessment had been made in strict conformity with the law.

§ 4. The municipal officers and city council of Nebraska city are hereby declared to be the successors in office of the officers and city council of the original corporations of Nebraska city, South Nebraska city and Kearney city, and shall be entitled to receive, and may sue for and recover all moneys, books, papers, and evidences of debt, or other property belonging to said original corporations, now in their hands or under their control, and may proceed to collect all delinquent taxes and debts due to said original corporations, and to apply the proceeds of the same in the same manner as the same might or should have been applied under existing laws or ordinances by their several predecessors in office, it being the intention of this act to authorize the municipal officers and city council of Nebraska city to collect all the taxes of the three corporations, and to apply the fund of each for the payment of the debts of each, and for their separate and sole benefit.

§ 5. All debts and liabilities contracted by the corporations of Nebraska city, South Nebraska city, and Kearney city, or by the mayors of all or either of them, or by others at the request of the mayors or either of them, for the purpose of improving the levee or grading the streets and building bridges, shall be and the same are hereby declared to be legal and valid, and it is hereby made the duty of the city council to levy a special tax on the property within the several corporations of not exceeding one half of one per cent annually until such debt shall be liquidated, and the warrants or other evidences of debt heretofore issued by such corporations, shall be received in payment of such special taxes due upon the property embraced within the original corporation which issued such warrants or other evidences of debt.

§ 6. The municipal officers and city council of Nebraska city, are hereby declared to be the successors in office of the corporate authorities of Nebraska city, South Nebraska city, and Kearney city, severally as well as jointly, and are hereby invested with all the corporate authorities of each as they were vested and purchased prior to the passage of "an act to consolidate the corporations of Nebraska city, South Nebraska city, and Kearney city, for the purpose of entering each in the United States land office, and for perfecting the entry of each as the necessities of the case may require; and they are authorized

and empowered for that purpose to use the original corporate name of each, or the present corporate name of Nebraska city, as may be considered most necessary and proper.

§ 7. This act shall take effect and be in force from and after its publication in the Nebraska City News.

Approved October 30, 1858.

AN ACT

To Incorporate the City of Rulo.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That all the territory within the geographical limits of the city of Rulo, together with the addition now added, and any addition that may hereafter be added thereto according to law, is hereby declared to be a city by the name and style of Rulo.

§ 2. The said city is hereby made a body corporate and political, and is hereby invested with the same power, and corporate rights and privileges, as are granted in an act approved March 2, 1855, entitled "an act to incorporate Nebraska city." Provided, only that the election of city officers be held on the first Monday in April, A. D.

§ 3. This act to be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Incorporate the Town of Fremont, Dodge County, N. T.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the Fremont company, as shown by the records of Dodge county, N. T., together with all additions that may hereafter be made thereto according to law, is hereby declared to be a town by the name and style of the town of Fremont.

§ 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules, and have the benefit and government of said town, as shall, from time to time, be deemed expedient and proper, not inconsistent with the laws and constitution of the United States and the laws of this territory.

§ 3. All citizens of said town entitled to vote at county elections, may vote at any election of officers to be elected for the government of said town.

§ 4. Whenever a majority of the legal voters of said town shall petition any justice of the peace of the county of Dodge for an organization of said municipal government, the said justice of the peace shall fix the time for a municipal election, which shall not be more

twenty days from the time such petition is presented to said justice, and he shall order an election by posting three notices of said election in public places in said town, and appointing three inspectors of such election; and said election shall be held in accordance with the general election law, and the returns made to the justice calling such election, who shall give certificates of election to the persons having the highest number of votes.

§ 5. At the aforesaid election the legal voters shall elect a town council, consisting of five persons, who shall possess the qualifications of electors; and one of the five persons shall be distinguished on the ballots as for president, another for clerk, and a third for treasurer, and this election shall be the first organization of said town.

§ 6. At the election as above provided, or at any regular election for said trustees, or at any public meeting which shall have been called by a majority of said trustees, the voters of said town may enact such laws as in their judgment shall be for the best interests of said town; but if said electors should neglect or refuse to pass any laws which are clearly necessary for the good government and order of said town, or if any contingency should occur whereby it becomes necessary, then the said town council shall have powers to make such laws and regulations as the exigency may demand, but such laws and regulations shall only be in force until the next annual election of trustees.

§ 7. The said five trustees shall hold their offices for one year, or until their successors are chosen.

§ 8. This act shall take effect and be in force from and after its passage.

Approved November 2, 1858.

AN ACT

To Amend the Charter of the City of Bellevue.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "an act to amend the charter of the city of Bellevue, approved February 13, 1857," be and the same is hereby repealed.

§ 2. That the geographical limits of said city, are hereby changed so as to include the following boundaries, to wit: commencing at the southwest quarter of section two, township thirteen (13), range thirteen (13), east; thence east to the Missouri river; thence northerly along the bank of said river to the north line of section nineteen (19), township 14, range 14; thence to the northwest corner of section 24, township 14, range 13; thence to the northwest corner of section 36, township 14, range 13; thence westerly to the northwest corner of the northeast quarter of section 35, township 14, range 13; thence southerly to the place of beginning, saving and reserving out of the same so much of section six and the south half of section thirty-one, as

has not been recorded as a town in the recorder's office of S county.

§ 3. That the board of aldermen for said city, shall be increased to six, who shall be elected at the general election hereafter to be held, and a majority of whom shall constitute a quorum for the transaction of business, and that the time of holding annual elections in said city of Bellevue is hereby changed and shall hereafter be held on the Tuesday in October in each year.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 2, 1858.

AN ACT

To Incorporate the Nebraska City Hydraulic Gas Light and Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska;* That Stephen F. Nucholls, Thomas Morton, William Bennet and their associates, heirs and assigns, be and they are hereby created a body politic and corporate for the period of twenty years by the name and style of the Nebraska city hydraulic gas and coke company, and by that name and style, they and their successors, shall be capable in law of contracting, and being contracted with, suing and being sued, defending and being defended against in all courts of law and equity, in all matters whatsoever, with full power to acquire, hold, occupy and enjoy all such real and personal estates as may be necessary and proper for the construction, extension and usefulness of the work of said company, and for the management and good government of the same, and they may have and use a common seal at pleasure.

§ 2. The corporation hereby created shall have full power and authority and shall, so soon as it becomes necessary so to do, construct, operation and shall transport and convey water through pipes, aqueducts and otherwise, and establish hydraulic fountains and reservoirs in convenient part of said city for the supplying the same with water, and shall have full power and authority to manufacture and sell gas to be made from any or all of the substances or a combination thereof from which inflammable gas is usually obtained and to be used for the purpose of lighting the said Nebraska city with gas or the use thereof, and any building, manufactories, public places or premises therein contained, so soon as expedient and necessary so to do, erect all necessary works and apparatus, and to lay pipe for the purpose of conducting the gas in any of the streets or avenues of said city: Provided, that no permanent injury or damage be done to any street, land or highway in said city.

§ 3. The capital stock of the company shall not exceed three hundred thousand dollars to be subscribed for, and paid in such proportions shall be prescribed by the by-laws and rules for the regulation

concerns of said company, as the said company may from time to time make and adopt relative to the management and disposition of the stock, property and estate of said company, and the said company shall have power to adopt rules and make regulations, define the duties of officers and agents to be employed, the number and election of directors and all such matters as pertain to the concerns of said company: Provided that nothing in this act shall be so construed as to give the said company the powers or privileges of banking, said corporation shall have the exclusive privilege of supplying the said city with gas for the purposes of affording light and supplying water in pipes, aqueducts, fountains, reservoirs as aforesaid for a period of twenty years from the time of its going into operation as required in section two of this act.

§ 4. This act shall take effect and be in force from and after the first day of October, A. D. 1859.

Approved November 3, 1858.

AN ACT

To Incorporate the Town of Saint Stephens in Richardson County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the town site claimed by the Saint Stephens company upon which the town of Saint Stephens is located, together with all additions that may be hereafter made thereto according to law, is hereby declared to be a town by the name and style of the town of Saint Stephens.

§ 2. That said town is hereby made a body corporate and is invested with all the privileges and attributes of a municipal corporation and may elect such officers, pass such laws, ordinances and rules for the benefit and government of said town, as shall from time to time be deemed expedient and proper not inconsistent with the laws of the United States, nor of this territory.

§ 3. Whenever ten of the qualified votes of said town shall petition the probate judge, or any justice of the peace of the county of Richardson, asking for the organization of the said municipal government the said judge of probate or justice of the peace shall fix the time for a municipal election, which shall not be more than ten days after the petition is presented to him, and shall at the same time appoint three judges of election, five days' notice of which shall be given in writing by posting the same in at least three of the most public places in the said town; and the said election shall be held in accordance with the general election law, and the returns shall be made to the probate judge or justice of the peace who ordered the election and he shall give to the persons having the highest number of votes certificates of their election.

§ 4. All citizens of said town entitled to vote for county elections may vote at any election held for the purpose of electing municipal officers of the said town.

§ 5. At the first election the corporate or municipal officers to be elected shall consist of a mayor, a town council of five members, a marshal and town clerk, who shall hold their offices one year, and shall possess the qualifications of voters. After the organization of the town council, the same may by ordinance abolish any of the offices provided for in this act, or create new ones as may be deemed necessary.

§ 6. The officers mentioned and provided for in the preceding section shall be sworn into office within ten days from the time of receiving their certificates of election.

§ 7. The mayor shall be the president of the council, and the town clerk shall be the clerk of the council and shall keep a correct record of the proceedings of the same.

§ 8. This act shall take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Consolidate the Towns of Rock Bluffs and North Rock Bluffs, and to Incorporate Rock Bluffs City.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the following described territory, being the east one-half of the southeast quarter of section eight, and lots four, five, and six, in section nine, and the northwest quarter, and the north half of the southwest quarter, and lot one, and the north half of lot two in section sixteen (16), and the northeast one-fourth of the northeast quarter of section seventeen (17), township eleven (11), north of range number fourteen (14), east of the sixth principal meridian line, situated in the county of Cass and territory of Nebraska, and at present embraced within the corporate limits of Rock Bluffs and North Rock Bluffs, together with all the additions that may be hereafter made thereto according to law is hereby declared to be a corporation by the name and style of Rock Bluff city.

§ 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record, or at any other legal tribunal, may have a common seal and may alter the same at pleasure, and may acquire, purchase, hold, lease or convey any estate, real, personal or mixed for the use of the corporation.

§ 3. The legislative authority of the city, is hereby vested in a mayor, and four aldermen, who shall constitute the city council.

§ 4. Every legal voter of the territory, who shall have been a resident of the city twenty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

§ 5. The election of the city officers shall be conducted in a manner similar to that in which the elections are conducted in the precinct, as near as the nature of the case permits—it shall be the duty of the council to appoint judges of elections.

§ 6. Any person offering to vote may be challenged, as in other elections, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

§ 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding his election.

§ 8. That the qualified electors of said city, shall, on the first Monday in May, A. D. 1859, and annually on the same day thereafter, elect a mayor, treasurer and four aldermen; a recorder, assessor and marshal, and the mayor and aldermen so elected, when assembled together and duly organized, shall constitute the city council, a majority of whom shall constitute a quorum for the transaction of business; they shall be elected for the term of one year, and until their successors are elected and qualified.

§ 9. It shall be duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished, to superintend and direct the official conduct of the subordinate officers, to sign and seal all commissions, licenses and permits granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of a city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

§ 10. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with exclusive original jurisdiction for the violation of the city ordinances, and with criminal jurisdiction of offenses against the laws of the territory, committed within the city, and with civil jurisdiction limited to the city, in the same manner as that of justices, limited to their counties. He shall not be disqualified from acting in such judicial capacity, by any proceedings being in the name or in behalf of the city.

§ 11. Appeals to the district court in the same county, shall be allowed from the judgments and decisions of the mayor, in the same cases, time and manner, as may at any time be allowed by law from those of justices of the peace, and they shall be tried as in other cases; and he will be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace. He shall be the presiding officer of the city council, when present, and shall give the casting vote when there is a tie; and in his absence the council may appoint a president for the time being from their own body.

§ 12. The council shall be the judge of the qualifications and election of its own members, it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members in such manner and by such penalties as it may adopt.

§ 13. The marshal shall be a conservator of the peace, and is the executive officer of the mayor's court, and shall execute and return all processes directed to him by the mayor and in cases for the violation of the city ordinances, and of the criminal laws of the territory, may execute the same in any part of the county, and he shall have the same authority within the city, to quell riots and disturbances, to prevent crimes and to arrest the offenders, that the sheriff has within his county, and may,

in the same cases and under the same penalties, require the aid of citizens, and perform all duties imposed by the council. He may, with the approval of the council, appoint one or more deputies, and may discharge them, and he shall be responsible for their doings when acting officially. For the services of legal process he shall be entitled to the same fees as a constable, and for services required by the council, such compensation as it may allow.

§ 14. The treasurer, recorder, assessor and marshal shall give such bond, perform such duties, and exercise such powers, as may be required of them by ordinance not inconsistent with law, which bonds shall be approved by the mayor, and filed with him.

§ 15. In all elections for city officers, the mayor shall issue a proclamation to the voters thereof, naming the time and place for such elections, and the officers to be chosen, and cause a copy to be posted up at least ten days previous to the day of election. The polls shall be opened between the hours of eight and ten o'clock in the forenoon and continue open until six o'clock in the afternoon. Within two days after the election, the judges of election shall make out their returns to the president of the city council, who shall examine them at their next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

§ 16. No member of the city council shall be eligible to any office within the gift of the city council, during the term for which he is elected; nor shall he be interested directly or indirectly, in the profits of any contract or job of work or services, to be performed for the city.

§ 17. Ordinances passed by the city council, shall be signed by the mayor and attested by the recorder, and before they take effect, be published in one or more newspapers printed in the city, at least ten days; and if there be no such newspaper, they shall be posted up upon the door of the council house, the same length of time. They shall also be recorded in a book to be kept for that purpose, signed therein by the mayor and attested by the recorder.

§ 18. It is the duty of the recorder to keep a true record of all the proceedings of the council, and such records shall be open in all business hours to the inspection of any citizen.

§ 19. The mayor, aldermen, marshal, treasurer, recorder and assessor shall respectively take an oath to support the constitution of the United States, and faithfully and impartially to perform their duty to the best of their knowledge and ability, which said oaths shall be indorsed upon the back of their bonds. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or recorder when he is qualified, and in the transaction of the business of the corporation, those officers, and the president for the time being, may administer oaths, which shall have the same effect as if administered by other officers authorized to administer oaths.

§ 20. The recorder, marshal and assessor, shall receive such fees as the city council shall deem right, not exceeding the amount allowed county officers for similar services.

§ 21. The council may hold its meetings as it sees fit, having fixed

stated times, or provide the manner of calling them by ordinances, and its meetings shall be public.

§ 22. The council may appoint in such manner as it determines during its pleasure street commissioners, clerk of the market, city supervisors, health officers, and such other officers as it may deem advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

§ 23. When a vacancy occurs in any of the elective offices, the council may fill the vacancy by appointment of record until the next election and the qualification of the successor.

§ 24. The city council is invested with authority to make ordinances to secure the inhabitants against fire, against violations of the public peace; to suppress riots, gambling and drunkenness, and indecent and disorderly behavior in public places, and in general to provide for the safety, prosperity and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before the mayor, as in civil proceedings before a justice of the peace, and the laws of the territory relative to carrying into effect a judgment of a justice of the peace imposing a fine, shall be applied to judgments in the above cases.

§ 25. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus, and powers to grant ferry licenses, regulated by law, within the corporate limits of the city.

§ 26. The council may regulate the keeping and sales of gunpowder within the city.

§ 27. The council shall have exclusive authority to provide for the license and prohibition of all shows, exhibitions, and theatrical performances, billiard tables, ball alleys, or other bowling saloons, ten pins or other alleys, and places where games of skill or chance are played, but the above authority extends to no exhibition of a purely scientific character. When the laws of the territory permit or require license for the sale of intoxicating liquors, that matter shall be within the exclusive authority of said council, and it may at all times prohibit the retail of such liquors unless such prohibition should be inconsistent with the laws of the territory.

§ 28. The council may make all necessary ordinances in relation to the cleanliness or health of the city, and may require the owners of lots upon which water becomes stagnant to drain or fill up the same, and in default thereof, after reasonable notice, may cause the same to be done at the expense of the city, and assess the cost thereof on the specific lots, and cause them to be sold by the city collector, as in case of taxes, and the owner may redeem them from such sale as in case of sale for taxes.

§ 29. Said council may regulate the system of cartage, drayage, hacks and omnibuses within the city, and may issue license therefor, and may prohibit hogs and other animals from running at large within the limits of the city.

§ 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers are accountable to the said city council in such manner as it directs. Said council shall publish annually a particular statement of the receipts and expenditures of the city, and of all debts owing to and by the same which statement shall be posted at the door of the council house within the month of April of each year.

§ 31. Said council shall have the exclusive authority to establish the grade of all streets and alleys in the city, and may change the same upon the petition of the owners of two-thirds of the value of the property on both sides of the street when it is desired to be changed.

§ 32. Imprisonment for the violation of any ordinance shall not exceed fifteen days, and the county jail shall be the place of imprisonment, but at the expense of the city until the city council provides a prison.

§ 33. The city council is authorized to levy and collect taxes not exceeding one-half of one per cent on all taxable property within the city according to the laws of the territory.

§ 34. The marshal shall be collector, or in case of his absence or disability, such person as the council shall appoint in his stead shall be the collector of the taxes, and before proceeding to collect the same shall give twenty days' notice of the assessment and levy of the tax, and the rate thereof in general terms without the name or description of the property in a newspaper, printed in the city if there be one, if not, then by two months' notice posted in three of the most public places in the city, and one at the door of the council house.

§ 35. At any time within the time said notice is being thus published any person aggrieved by the assessment or taxation, may appear before the council, which may correct the same if found erroneous.

§ 36. The tax list shall be made out or caused to be done by the city council, and the mayor shall indorse thereon an order to the marshal to collect the taxes thereon levied, which shall authorize him to collect the same by levy and sale as on execution.

§ 37. Taxes on real property shall be a lien thereon, and it may be sold therefor when the taxes remain unpaid for six months after publication of notice of the tax.

§ 38. Such sale must be at auction, and there must be thirty days notice given, as above provided, for notifying of the assessment and tax. In such sale he who bids to pay the amount due for the least quantity of land, will be the highest bidder, and the manner of ascertaining the least portion bid for shall be determined by ordinance of the city council.

§ 39. The marshal shall execute and deliver to the purchaser a deed running in the name of the territory, which shall have the same force and effect as the deed of the proper county officer in like circumstance on sale for county taxes.

§ 40. The council shall have the control of the streets and alleys and public grounds of the city, and may cause sidewalks to be paved in the same, and to this end may require owners of lots to pave or repair

the same contiguous to their respective lots; and in case of neglect, after a reasonable time named in the order, the same may be done by the city, and the same assessed on the contiguous lots, which shall have the same force and effect of a tax levied thereon, and the same may be sold therefor as for a tax, subject to the same right of redemption.

§ 41. The council are authorized to borrow money, at their discretion, for any object, if at a regular notified meeting, under a notice stating distinctly the nature and object of the loan, and the amount thereof, as nearly as practicable, the voters of the city may determine in favor of the loan, by a majority of two-thirds of the legal voters at the said election, and the said loan can in no case be diverted from the specific object.

§ 42. All road tax which may be paid upon any property in the said Rock Bluff city, in lieu of labor, or otherwise, shall be paid to the proper authorities of said city for the improvement of the streets thereof.

§ 43. Any person being a resident of said city, subject by the laws of the territory to do work upon roads and highways, shall be required to do and perform or cause the same to be done, under the direction of the proper authorities, upon the streets of said city, or public roads and highways leading thereto, as said authorities may direct. The city council shall supercede the supervisor in all jurisdiction within the corporate limits.

§ 44. After the election of the officers contemplated in this act, it shall be the duty of the officers of the original corporations to deliver to the proper officers all books, papers and documents pertaining to their respective offices, which shall be filed and preserved for future reference.

§ 45. The first election under this act shall be called by the corporate authorities of the original corporations, by posting up notices, not less than ten days previous, in three of the most public places in each of said corporations; whose duty it shall be to fix the place, and appoint three judges to hold said election. The returns shall be made to the said corporate authorities, at the place of holding said election, and it shall be their duty forthwith to notify the officers elected, who shall qualify and organize within ten days after said notification.

§ 46. When the voters shall exceed four hundred, the council may divide the city into two or more wards, but not to exceed three until the number of inhabitants shall exceed twenty thousand; and each ward shall elect two aldermen, who, with the mayor, shall thereafter constitute the city council, with all the powers and privileges hereinbefore granted to said council.

§ 47. This act to take effect from and after its passage; and all acts and parts of acts conflicting herewith, are hereby declared to be repealed from and after the first Monday in May, A. D. 1859.

Approved November 3, 1858.

AN ACT

To Amend an Act entitled "An Act to Incorporate the Florence Bridge Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the act entitled "an act to incorporate the Florence bridge company," passed at the first session of the legislature of said territory, shall be and the same is hereby so amended as to extend the time for commencing said bridge, until the first day of January, A. D. eighteen hundred and sixty-one; and the time for the completion of the same, until the first day of January, A. D. eighteen hundred and sixty-six.

§ 2. This act to take effect and be in force from and after its passage.
Approved November 4, 1858.

AN ACT

To Incorporate the Town of Pawnee City.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the territory within the geographical limits of the town of Pawnee city, as designated upon the plat of said town, together with all the additions that have been made thereto, is hereby declared to be a town, by the name and style of Pawnee city.

§ 2. The said town is hereby made a body corporate and politic, and is hereby invested with the same power, and corporate rights and privileges as were granted in an act entitled "An act to incorporate Nebraska city," approved March 2, 1855.

§ 3. This act to take effect from and after its passage.
Approved November 4, 1858.

AN ACT

To Incorporate the Town of Parkersburgh, in Monroe County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town site claimed by A. B. Malcolm & Co., upon which the town of Parkersburgh is situated, containing three hundred and twenty acres of land, together with such additions as may be hereafter made thereto according to law, is hereby declared to be a town, by the name and style of the town of Parkersburgh.

§ 2. That said town is hereby made a body corporate, and is invested with all the privileges and attributes of a municipal corporation, and may elect such officers, pass such laws, ordinances and rules for the benefit and government of said town, as shall from time to time be

deemed expedient and proper, not inconsistent with the laws of this territory and the constitution of the United States.

§ 3. Whenever a majority of the legal voters shall signify in writing to the judge of probate of said county, that they desire an organization and an election of town officers, the said judge shall, within ten days thereafter, give a written or printed notice, which he shall cause to be posted in at least three of the most public places in said town, giving ten days' notice of a meeting of the legal voters of said town, and stating the object of the meeting.

§ 4. The said judge of probate shall preside at the said meeting, at which time and place such offices as shall be deemed necessary and proper for the government of said town, shall be adopted by a majority of the legal voters as aforesaid, and said meeting may adjourn from time to time until said object shall be effected.

§ 5. Immediately after the signification of the legal votes as provided in the last section, the said judge of probate shall cause notice to be posted as provided in section three of this act, for the election of such officers as are provided for by said meeting, which election shall be the first organization of said town, and thereafter such offices may be abolished and new ones created, as the majority of the legal voters may from time to time direct by their vote, at any town election to be held thereafter.

§ 6. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Incorporate the Town of Mahala City and Locate the County Seat of Butler County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the town of Mahala city in Butler county together with all the additions that may be hereafter made according to law is hereby declared to be a town by the name and style of the town of Mahala city.

§ 2. The said town is hereby made a body corporate and politic, and is hereby invested with the same powers and corporate rights, and privileges, as are granted in an act passed at the first session of the Legislature of Nebraska, entitled "An act to incorporate the city of Plattsmouth."

§ 3. That the county seat of said Butler county is hereby located at said town of Mahala city, to remain until removed by a majority of the legal voters of said county of Butler.

§ 4. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Incorporate the Town of Bon Homme City and to Establish a Ferry at said Point.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all the territory within the geographical limits of the town of Bon Homme city as designated upon the plat of said town together with all the additions that have been made thereto according to the general survey and according to law is hereby declared to be a town by the name and style of Bon Homme city.

§ 2. The said town is hereby made a body corporate and politic and is hereby invested with the same powers and corporate rights and privileges as are granted in "An act to consolidate the corporation of Nebraska city, South Nebraska city and Kearney city and to incorporate Nebraska city approved December 31, 1857.

§ 3. That the Bon Homme city town company and their assigns are hereby authorized and empowered to establish and keep a ferry across the Missouri river for the term of fifteen years and that said company shall have the exclusive privilege for said term of years for the distance of one and a half miles above a point immediately opposite the head of Bon Homme Island on said river and for one and a half miles below the head of said island along said river and shall have the right to charge the same rates of ferriage as are allowed by "An act to establish a ferry across the Missouri river at central city in Burt county approved February 13, 1857."

§ 4. This act to take effect and be in force from and after its passage. Approved November 4, 1858.

AN ACT

To Incorporate the City of Fort Calhoun, Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the following described territory, being the east half ($\frac{1}{2}$) of section eleven (11), and west half ($\frac{1}{2}$) of section twelve (12) in township seventeen (17), north of range twelve (12), east of the sixth principal meridian, and situated in the county of Washington, and territory of Nebraska, together with all the additions that may hereafter be made thereto according to law is hereby declared to be a corporation by the name of the "city of Fort Calhoun."

§ 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name, may sue and be sued, plead and be impleaded, complain and defend in any court of record, and any other place whatsoever, may have a common seal, and may alter it at pleasure, and may take, hold, purchase, lease, carry and dispose of any real, personal or mixed estate for the use of said corporation.

§ 3. The legislative authority of the city is hereby vested in a city

council, consisting of a mayor and a board of aldermen, composed of five members.

§ 4. Every legal voter of the territory who shall have been a resident of said city sixty days next preceding a city election is declared a citizen of said city and is entitled to vote at all the elections thereof.

§ 5. The election of the city officers shall be conducted in a manner similar to township elections as near as the notice of the case permits.

§ 6. A person offering to vote may be challenged as in other elections in the township, and an oath may be administered to him in like manner, naming the qualification herein prescribed.

§ 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding his election.

§ 8. That the qualified electors of said city, shall on the second Monday in February, A. D. 1859, and annually on a day to be fixed by the council, elect a mayor and five aldermen, a recorder, assessor, treasurer and marshal, and the mayor and aldermen so elected when assembled together and duly organized, shall constitute the city council, a majority of whom shall constitute a quorum for the transaction of business; they shall be elected for the term of one year, and until their successors are elected and qualified.

§ 9. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished, to superintend and direct the official conduct of subordinate officers, to sign and seal all commissions, licenses, and permits granted by the city council, and to perform such duties, and exercise such powers as pertain to the office of mayor of a city and such as may be granted or imposed by the ordinances of the city, consistent with law.

§ 10. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with exclusive original jurisdiction for the violation of the city ordinances, and with criminal jurisdiction of offenses against the laws of the territory, committed within the city, and civil jurisdiction limited to the city, in the same manner as that of justices limited to townships. He shall not be disqualified from acting in such judicial capacity by any proceedings, being in the name or in behalf of the city.

§ 11. Appeals to the district court in the same county, shall be allowed from the judgments and decisions of the mayor in the same cases, time and manner as may at any time be allowed by law from those of other justices, and they shall be tried as in other cases, and he will be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace. He shall be the presiding officer of the city council when present, and shall give the casting vote when there is a tie, and in his absence the council may appoint a president for the time being from their own body.

§ 12. The council shall be the judge of the qualification and election of its own members; it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members, in such manner and by such penalties as it may adopt.

§ 13. The marshal shall be conservator of the peace, and is the executive officer of the mayor's court, and shall execute and return all processes directed to him by the mayor, and in cases for the violation of the city ordinances, and of the criminal laws of the territory, may execute the same in any part of the county; and he shall have the same authority within the city to quell riots and disturbances, to prevent crimes and to arrest offenders, that the sheriff has within his county, and may, in the same cases, and under the same penalties, require the aid of citizens, and perform all duties imposed by the council. He may, with the approval of the council, appoint one or more deputies, and discharge them, and he shall be responsible for their doing when acting officially. For the services of legal process, he shall be entitled to the same fees as a constable, and for services required by the council, such compensation as it may allow.

§ 14. The treasurer, recorder, assessor and marshal, shall give such bond, perform such duties, and exercise such powers as may be required of them by ordinances not inconsistent with the law, which bonds shall be approved by the council and filed with the mayor.

§ 15. In all elections for city officers, the mayor shall issue a proclamation to the voters of the city, naming the time and place for such election and the officers to be chosen, and cause a copy to be posted up at least ten days previous to the day of election. The polls shall be open between the hours of eight and ten o'clock in the forenoon, and continue open until three o'clock in the afternoon. Within two days after the election, the judges of election shall make out their returns to the president of the city council, who shall examine them at the next meeting and cause an abstract of the votes to be recorded in a book kept for that purpose.

§ 16. No member of the city council shall be eligible to any office within the gift of the city council, during the term for which he is elected, nor shall he be interested, directly or indirectly, in the profits of any contract job work or service to be performed for the city.

§ 17. Ordinances passed by the city council shall be signed by the mayor and attested by the recorder, and, before they take effect, be published at least ten days in one or more newspapers printed in the city. They shall also be recorded in a book to be kept for that purpose, signed therein by the mayor and attested by the recorder.

§ 18. It is the duty of the recorder to keep a true record of all the proceedings of the city council, and such records shall be open in all business hours to the inspection of any citizen.

§ 19. The mayor, aldermen, marshal, treasurer, recorder and assessor shall respectively take an oath to support the constitution of the United States and the laws of this territory, and faithfully and impartially to perform their duties to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or recorder when he is qualified, and in the transaction of the business of the corporation those officers and the president for the time being may administer oaths, which shall have the same effect as if administered by other officers authorized therefor.

§ 20. The recorder, marshal and assessor shall receive such fees as the city council shall deem right, not exceeding the amount allowed county or township officers for similar services.

§ 21. The council may hold its meetings as it sees fit, having fixed stated times; or provide the manner of calling them by ordinances, and its meetings shall be public.

§ 22. The council may appoint in such manner as it determines during its pleasure, street commissioners, clerk of the market, city supervisors, health officers, as it may deem advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

§ 23. The city council is invested with authority to make ordinances to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, and drunkenness, and indecent behavior in public places, and in general to provide for the safety and prosperity, and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by a complaint before a justice of the peace, and the laws of the territory relative to the carrying into effect a judgment of a justice of the peace imposing a fine shall be applied to judgment in the above cases.

§ 24. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose, and other apparatus, and powers to grant ferry licenses regulated by law within the corporate limits of the city.

§ 25. The council may regulate the keeping and sale of gunpowder within the city.

§ 26. The council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows, and theatrical performances, billiard tables, ball or ten pin alleys, and other saloons, but the above authority extends to no exhibition of a purely scientific character. The city council shall also have power to license and regulate the retailing of intoxicating liquors.

§ 27. The council may make all necessary ordinances in relation to the cleanliness or health of the city, and may require the owners of lots in which water becomes stagnant, to drain or fill up the same, and in default thereof after reasonable notice may cause the same to be done at the expense of the city, and assess the costs thereof on the respective lots, and cause them to be sold by the city collector as in case of taxes, and the owner may redeem from such sale, as in case of a sale for tax.

§ 28. Said council may regulate the system of cartage, drayage, hacks, and omnibuses within the city, and may issue licenses therefor, and may prohibit hogs, and other animals from running at large within the limits of the city.

§ 29. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers are accountable to the said city council in such manner as it directs.

§ 30. The council shall have the exclusive authority to establish the grade of all streets and alleys in the city, and may change the same upon the petition of the owners of two-thirds of the value of the real property on both sides of the street, when it is desired to be changed.

§ 31. Imprisonment for the violation of any ordinance shall not exceed fifteen days, and the county jail shall be the place of imprisonment, but at the expense of the city.

§ 32. The city council is authorized to levy and collect taxes not exceeding one half of one per cent on all taxable property within the city, according to the laws of the territory.

§ 33. The marshal shall be collector, or in case of his absence or disability, such person as the council shall appoint in his stead, shall be the collector of taxes, and before proceeding to collect the same shall give twenty days' notice of the assessment and levy of the tax and the rate thereof, in general terms, with a general description of the property, in a newspaper printed in the city or county.

§ 34. At any time within the time said notice is being thus published any person aggrieved by the assessment or taxation, may appear before the council which may correct the same if found erroneous.

§ 35. The tax shall be made out by the recorder, and the mayor shall indorse thereon an order to the marshal to collect the taxes therein levied which shall authorize him to collect the same by levy and sale as on an execution.

§ 36. Taxes on real property shall be a lien thereon and it may be sold therefor when the taxes remain unpaid for six months after publication of notices of tax.

§ 37. Such sales must be at auction, and there must be thirty days' notice prior to the sale, given as above provided for giving notice of the assessment and tax. In such sale he who bids to pay the amount due, for the least quantity of land, will be the highest bidder, and the manner of ascertaining the least portion bid for, shall be determined by ordinance of the city council.

§ 38. The marshal shall execute and deliver to the purchaser a deed running in the name of the territory, which shall have the same force and effect as the deed of the proper county officer, in like circumstances in sale for county taxes.

§ 39. The council shall have the title to, and full control of the streets, alleys, public grounds, wharves, squares, parks, and commons of the city, and may cause sidewalks to be paved in the same, and to this end may require owners of lots to pave or repair the same contiguous to their respective lots, and in case of neglect after a reasonable time named in the order, the same may be assessed on the contiguous lots which shall have the same force and effect of a tax levied thereon, and the same may be sold therefor as for a tax subject to the same right of redemption.

§ 40. The council are authorized to borrow money for any object in their discretion if at a regular or special election under a notice stating distinctly the nature and object of the loan, and the amount thereof as nearly as practicable, the voters of the city may determine in favor of

the loan by a majority of two-thirds of the legal voters at said election, and the loan can in no case be divested from the specified object.

§ 41. All road tax which may be paid upon any property in the said city in lieu of labor or otherwise shall be paid to the proper authorities of said city for the improvement of the streets thereof.

§ 42. Any person being a resident of said city, subject by the laws of the territory to do work upon roads, and highways shall be required to do and perform, or cause the same to be done under the direction of the proper authorities upon the streets of said city or public roads and highways leading thereto as said authorities may direct; the city council shall supercede the supervisor in all jurisdiction within the corporate limits of said city.

§ 43. The first election under this act shall be called by the present president of the board of trustees of said town of Fort Calhoun, who shall issue an order for that purpose at least ten days prior to the day of election; the returns of said election shall be made to the county clerk who shall notify the respective officers of their election, and said election shall be conducted in all respects as is provided by law, for holding of elections for county officers.

§ 44. This act shall take effect from and after its passage, and all acts and parts of acts heretofore passed conflicting herewith are hereby repealed.

Approved November 4, 1858.

AN ACT

To Incorporate the City of Fort Calhoun, Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the following described territory, being the east half ($\frac{1}{2}$) of section eleven (11), and west half ($\frac{1}{2}$) of section twelve (12), in township seventeen (17), north of range twelve (12), east of the sixth principal meridian, and situated in the county of Washington and territory of Nebraska, together with all the additions that may hereafter be made thereto according to law, is hereby declared to be a corporation by the name of the city of Fort Calhoun.

§ 2. The said city is hereby made a body corporate and politic, and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record and any other place whatsoever; may have a common seal, and may alter it at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal or mixed estate for the use of said corporation.

§ 3. The legislative authority of the city is hereby vested in a city council, consisting of a mayor and a board of aldermen, composed of five members.

§ 4. Every legal-voter of the territory who shall have been a resident of said city sixty days next preceding a city election, is declared a

citizen of said city, and is entitled to vote at all the elections thereof.

§ 5. The election of the city officers shall be conducted in a manner similar to township elections, as near as the nature of the case permits.

§ 6. A person offering to vote may be challenged, as in other elections in the township, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

§ 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city and has been a resident thereof one year next preceding his election.

§ 8. That the qualified electors of said city shall, on the second Monday in February, A. D. 1859, and annually, on a day to be fixed by the council, elect a mayor and five aldermen, a recorder, assessor, treasurer and marshal, and the mayor and aldermen so elected, when assembled together and duly organized, shall constitute the city council, a majority of whom shall constitute a quorum for the transaction of business. They shall be elected for the term of one year and until their successors are elected and qualified.

§ 9. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed, and their violation punished; to superintend and direct the official conduct of subordinate officers; to sign and seal all commissions, licenses and permits granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of a city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

§ 10. The mayor shall be a conservator of the peace within the city, and ex-officio a justice of the peace, and is invested with exclusive original jurisdiction for the violation of the city ordinances, and with criminal jurisdiction of offenses against the laws of the territory committed within the city, and civil jurisdiction limited to the city, in the same manner as that of justices limited to townships. He shall not be disqualified from acting in such judicial capacity by any proceedings being in the name or in behalf of the city.

§ 11. Appeals to the district court in the same county shall be allowed from the judgments and decisions of the mayor, in the same cases, time and manner as may at any time be allowed by law from those of other justices, and they shall be tried as in other cases, and he will be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace. He shall be the presiding officer of the city council, when present, and shall give the casting vote when there is a tie, and in his absence the council may appoint a president for the time being from their own body.

§ 12. The council shall be the judge of the qualification and election of its own members; it may determine the rules of its own proceedings and shall keep a record thereof, which shall be open to the inspection of every citizen; and may compel the attendance of its members in such manner and by such penalties as it may adopt.

§ 13. The marshal shall be the conservator of the peace, and is the executive officer of the mayor's court, and shall execute and return al

processes directed to him by the mayor, and in cases for the violation of the city ordinances and of the criminal laws of the territory, may execute the same in any part of the county; and he shall have the same authority within the city to quell riots and disturbances, to prevent crimes and arrest offenders, that the sheriff has within his county; and may, in the same cases and under the same penalties, require the aid of citizens, and perform all duties imposed by the council. He may, with the approval of the council, appoint one or more deputies, and discharge them, and he shall be responsible for their doings when acting officially. For the services of legal processes, he shall be entitled to the same fees as a constable, and for services required by the council, such compensation as it may allow.

§ 14. The treasurer, recorder, assessor and marshal shall give such bond, perform such duties and exercise such powers as may be required of them by ordinances not inconsistent with the law, which bonds shall be approved by the council and filed with the mayor.

§ 15. In all elections for city officers the mayor shall issue a proclamation to the voters of the city, naming the time and place for such election, and the officers to be chosen, and cause a copy to be posted up at least ten days previous to the day of election; the polls shall be opened between the hours of eight and ten o'clock in the forenoon and continue open until three o'clock in the afternoon; within two days after the election the judges of election shall make out their returns to the president of the city council who shall examine them at the next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

§ 16. No member of the city council shall be eligible to any office within the gift of the city council during the term for which he is elected, nor shall he be interested directly or indirectly in the profits of any contract, job, work, or services to be performed for the city.

§ 17. Ordinances passed by the city council shall be signed by the mayor and attested by the recorder, and before they take effect be published, at least ten days, in one or more newspapers printed in the city, they shall also be recorded in a book to be kept for that purpose, signed therein by the mayor and attested by the recorder.

§ 18. It is the duty of the recorder to keep a true record of all the proceedings of the city council, and such records shall be open in all business hours to the inspection of any citizen.

§ 19. The mayor, aldermen, marshal, treasurer, recorder and assessor, shall respectively take an oath to support the constitution of the United States and the laws of this territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability. Other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor or recorder when he is qualified, and in the transaction of the business of the corporation, those officers and the president for the time being may administer oaths which shall have the same effect as if administered by other officers authorized therefor.

§ 20. The recorder, marshal and assessor shall receive such fees as

the city council shall deem right not exceeding the amount allowed county or township officers for similar services.

§ 21. The council may hold its meetings as it sees fit, having fixed stated times, or provide the manner of calling them by ordinances, and its meetings shall be public.

§ 22. The council may appoint in such manner as it determines, during its pleasure, street commissioners, clerk of the market, city supervisors, health officers, as it may deem advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

§ 23. The city council is invested with authority to make ordinances to secure the inhabitants against fire, against violation of the public peace, to suppress riots, gambling and drunkenness, and indecent behavior in public places, and in general to provide for the safety and prosperity and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city or by complaint before a justice of the peace, and the laws of the territory relative to the carrying into effect a judgment of a justice of the peace imposing a fine, shall be applied to judgments in the above cases.

§ 24. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus, and powers to grant ferry licenses, regulated by law, within the corporate limits of the city.

§ 25. The council may regulate the keeping and sale of gunpowder within the city.

§ 26. The council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows and theatrical performances, billiard tables, ball or ten pin alleys and other saloons, but the above authority extends to no exhibition of a purely scientific character. The city council shall also have power to license and regulate the retailing of intoxicating liquors.

§ 27. The council may make all necessary ordinances in relation to the cleanliness or health of the city, and may require the owners of lots in which water becomes stagnant, to drain or fill up the same; and in default thereof after reasonable notice, may cause the same to be done at the expense of the city, and assess the cost thereof on the respective lots, and cause them to be sold by the city collector, as in case of taxes, and the owner may redeem from such sale, as in case of a sale for tax.

§ 28. Said council may regulate the system of cartage, drayage, hacks and omnibuses within the city, and may issue licenses therefor, and may prohibit hogs and other animals from running at large within the limits of the city.

§ 29. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers are accountable to the said city council in such manner as it directs.

§ 30. The council shall have the exclusive authority to establish the

grade of all streets and alleys in the city, and may change the same upon the petition of the owners, of two-thirds of the value of the real property on both sides of the street when it is desired to be changed.

§ 31. Imprisonment for the violation of any ordinance shall not exceed fifteen days, and the county jail shall be the place of imprisonment, but at the expense of the city.

§ 32. The city council is authorized to levy and collect taxes, not exceeding one-half of one per cent on all taxable property within the city according to the laws of the territory.

§ 33. The marshal shall be collector, or in case of his absence or disability, such person as the council shall appoint in his stead shall be the collector of taxes, and before proceeding to collect the same, shall give twenty days' notice of the assessment and levy of the tax, and the rate thereof in general terms, with a general description of the property in a newspaper printed in the city or county.

§ 34. At any time within the time said notice is being thus published any person aggrieved by the assessment or taxation may appear before the council, which may correct the same if found erroneous.

§ 35. The tax shall be made out by the recorder, and the mayor shall indorse thereon an order to the marshal to collect the taxes thereon levied, which shall authorize him to collect the same by levy and sale as on an execution.

§ 36. Taxes on real property shall be a lien thereon, and it may be sold therefor when the taxes remain unpaid for six months after publication of notices of tax.

§ 37. Such sale must be at auction, and there must be thirty days' notice prior to the sale, given as above provided, for giving notice of the assessment and tax. In such sale he who bids to pay the amount due for the least quantity of land will be the highest bidder, and the manner of ascertaining the least portion bid for, shall be determined by ordinance of the city council.

§ 38. The marshal shall execute and deliver to the purchaser a deed running in the name of the territory, which shall have the same force and effect as the deed of the proper county officer in like circumstances in sale for county taxes.

§ 39. The council shall have the title to and full control of the streets, alleys, public grounds, wharves, squares, parks, and commons of the city, and may cause sidewalks to be paved in the same, and to this end may require owners of lots to pave or repair the same, contiguous to their respective lots, and in case of neglect after a reasonable time named in the order, the same may be assessed on the contiguous lots, which shall have the same force and effect of a tax levied thereon and the same may be sold therefor as for a tax, subject to the same right of redemption.

§ 40. The council are authorized to borrow money for any object in their discretion, if at a regular or special election under a notice stating distinctly the nature and object of the loan, and the amount thereof as nearly as practicable, the voters of the city may determine in favor of the loan by a majority of two-thirds of the legal voters at said election, and the loan can in no case be diverted from the specified object.

§ 41. All road tax which may be paid upon any property in the said city, in lieu of labor, or otherwise, shall be paid to the proper authorities of said city for the improvement of the streets thereof.

§ 42. Any person being a resident of said city, subject by the laws of this territory to do work upon roads and highways, shall be required to do and perform, or cause the same to be done, under the direction of the proper authorities, upon the streets of said city, or public roads and highways leading thereto, as said authorities may direct. The city council shall supercede the supervisor in all jurisdiction within the corporate limits of said city.

§ 43. The first election under this act shall be called by the present president of the board of trustees of said town of Fort Calhoun, who shall issue an order for that purpose at least ten days prior to the day of election. The returns of said election shall be made to the county clerk, who shall notify the respective officers of their election, and said election shall be conducted in all respects as is provided by law for holding of elections for county officers.

§ 44. This act shall take effect from and after its passage; and all acts and parts of acts heretofore passed, conflicting herewith, are hereby repealed.

Approved November 4, 1858.

AN ACT

To Incorporate the Salt Creek Bridge and Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That T. J. Jones, his associates and their successors, be and the same are hereby declared to be a body politic and corporate under the name and style of the Salt creek bridge and ferry company, and by that name and style said company may sue and be sued, plead and be impleaded, grant and exercise by its corporate name, purchase, sell, hire, lease and hold property, real, personal and mixed, in all lawful ways; may have a corporate seal, and alter the same at pleasure; may make all by-laws necessary for their government, not inconsistent with law. And said corporation shall expire and cease to be possessed of the powers and privileges contained in this act, at the expiration of ten years from and after the passage of this act.

§ 2. The said company shall have exclusive power to build a bridge or run a ferry across Salt creek at a point in section one (1), in township number twelve (12), north of range number nine (9), east of the sixth principal meridian, and shall have exclusive privilege of building a bridge or establishing a ferry across said creek, for the distance of ten miles from its mouth.

§ 3. The capital stock of said company shall be five thousand dollars, and shall be divided into shares of one hundred dollars each, to be subscribed, paid for and transferred in such manner as the directors

may determine. The corporate business of said company shall be managed by a board of directors, consisting of five stockholders, who shall be elected by a majority of the stockholders, at such time and place as the company may by by-laws direct, each share entitling the holder thereof to one vote.

§ 4. It shall be the duty of said company to erect and keep in repair within one year from the time of taking effect of this act, a good and suitable bridge or ferry for the accommodation of travelers and the safe transportation of persons and property across said Salt creek.

§ 5. The rates of toll shall be as follows:

For two horses, mules or oxen.....	\$1.00
For each additional pair of horses, mules or oxen.....	25
“ horse, mule and rider.....	30
“ “ buggy	75
“ led horse or mule.....	25
“ loose cattle, per head	10
“ footman	10
Sheep and hogs, per head.....	5
Each cwt. of freight	10
Lumber, per M feet.....	2.00

§ 6. That if the said company, or any person or persons in their employ, shall charge and receive from any person a greater sum for toll or ferriage than is here allowed by law, he or they shall on conviction thereof forfeit and pay to the party aggrieved the sum of ten dollars for each offense, and suit for the recovery of the same shall be commenced by civil action in the name of the party aggrieved.

§ 7. And provided that the provisions of this act shall not be so construed as to give the said company banking privileges.

§ 8. The act to take effect and be in force from and after its passage.
Approved November 4, 1858.

AN ACT

To Incorporate the Missouri River and Nemaha Valley Rail Road Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That F. L. Goldsberry, Charles Martin, Eli Bedard, D. T. Easley, B. F. Cunningham, S. B. Miles, Joseph G. Ramsey, Wm. Kenceleer, A. C. Leirft, Joseph Yaunt, Wm. P. Loan, Wm. Goalsby, Jesse Crook, Samuel Kieffer, A. L. Currence, J. C. Lincoln, T. R. Hare, Arnet Roberts, J. Lebo, John A. Burbank, Thomas J. Whitney, Christian Bobst, John Frice, F. F. Limming, H. N. Gere, J. P. Sutton, J. C. Peavey, E. W. Fowler, E. Jordan, and their successors and assigns, are hereby created a body corporate and politic, under the name and style of the Missouri River and Nemaha Valley rail road company, who shall have perpetual succession, and by that name may be and are hereby made capable, in law and equity, to sue and be sued, plead and be impleaded, defend*

and be defended against, to make, to have and use a common seal, the same to renew and alter at pleasure, and shall have, and are hereby vested with all the powers, privileges and immunities, which are and may be necessary to carry into effect the purposes and objects of this act as hereinafter set forth, and the said company are hereby authorized and empowered to locate, construct and finally complete a rail road from a point at or as near as practicable the junction of the Missouri and Great Nemaha rivers, upon the most eligible route to Fort Kearney, there to unite with any rail road which may hereafter be constructed up the valley of the Great Platte; and said corporation is hereby authorized to lay out their said road wide enough for a double track the whole length, and for the purpose of cutting embankments of stone and gravel, may take as much more land as may be necessary for the proper construction and security of said road: Provided, all damages that may be occasioned to any person or corporation, by taking such land or material for the purposes aforesaid, shall be paid for by the company, in the manner hereinafter prescribed.

§ 2. The capital stock of said company shall consist of three millions of dollars, to be divided into shares of twenty-five dollars each. The immediate government and direction of said company shall be vested in fifteen directors, who shall be chosen by the stockholders of the company in the manner hereinafter provided, who shall hold their office for one year and until their successors are elected and qualified; and the said directors, or a majority of them, shall elect one of their number president of the board, who shall also be president of the company.

§ 3. That said corporation is hereby authorized by their agents, surveyors and engineers to cause such examinations and surveys to be made of the ground and country between said points, as shall be necessary to determine the most advantageous routes or lines for the construction of said rail road, and it shall be lawful for said corporation to enter upon and take possession of and use all such lands and real estate as may be necessary to determine the most advantageous routes or lines for the construction of said rail road and it shall be lawful for said corporations to enter upon and take possession of and use all such lands and real estate as may be necessary to the construction and maintenance of said road and the occupation that may be requisite to the same, and may purchase or receive and hold all lands for the purposes of said road, and for all lands occupied by said company, belonging to other parties, shall be paid for in the way of damages to be ascertained in such manner as may be provided by law.

§ 4. Any person wilfully, maliciously or wantonly damaging or destroying any property belonging to said company shall forfeit and pay double the value thereof, to be ascertained by any court having jurisdiction and shall be deemed guilty of a misdemeanor and punished accordingly.

§ 5. The board of directors shall have power to make all necessary rules and by-laws for the transaction of the business of the company, fixing upon the time and places of holding the annual elections, and regular meetings of the board and company, and at all such meetings

each stockholder shall be entitled to a vote in person or by proxy, for each share he may lawfully own in said stock.

§ 6. That F. L. Goldsberry, D. T. Easley, Wm. P. Loan, John A. Burbank, J. C. Lincoln, F. F. Limming, H. N. Gere, John Frice, are hereby appointed commissioners to open subscription books for the stock of said company, at such times and places as may be agreed upon by them, giving proper notice thereof by publication, requiring five per cent upon each share subscribed for and so soon as one thousand shares are subscribed, said commissioners shall call a meeting of the stockholders for the purpose of electing a board of directors for the next ensuing year and when the said directors are being chosen the said commissioners shall deliver to the said board of directors all moneys, books and other effects belonging to the company. The said company when thus organized are hereby authorized to issue certificates of stock, to borrow money, not exceeding the capital stock and make all such contracts as may be necessary to carry into effect the powers herein granted: Provided that nothing in this act shall be construed to confer the powers and privileges of banking.

§ 7. That the corporation may take and transport any persons and every species of merchandise or produce or other property, by the force of steam or other power, and may fix and establish rates of toll and receive the same for the transportation of persons or property upon said road.

§ 8. Said company shall transport the United States mail upon such terms as may be agreed upon by the post office department and the company.

§ 9. In the event the company fail to commence the work upon said road within five years this charter shall be thereby forfeited.

§ 10. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Amend an Act entitled "An Act to Incorporate the City of Omaha, Approved February 2, 1857."

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That "an act entitled an act to incorporate the city of Omaha," be amended so that it shall read as follows: The following described territory, being sections fifteen and twenty-two, fractional sections eleven, fourteen and twenty, the south half of fractional section ten, the south of the north half of fractional section ten, the southeast quarter of section nine, the east half of section sixteen, the northeast quarter of section twenty-one, the east half of the southeast quarter of section twenty-one, the northeast quarter of the northeast quarter of section twenty-eight, the north half of the north half of section twenty-seven, the north half of the north half of fractional section twenty-six, all in township number fifteen (15), north, range num-

ber thirteen, east of the sixth principal meridian, and situated in the county of Douglas and territory of Nebraska, together with all the additions that may be made hereafter, thereto, according to law, is hereby declared to be a corporation by the name of the city of Omaha, and the east line of said city shall extend to the middle of the main channel of the Missouri river.

§ 2. The said city is hereby made a body corporate and politic and is invested with all the powers and attributes of a municipal corporation, and by that name may sue and be sued, plead and be impleaded, complain and defend in any court of record and any other place whatsoever, may have a common seal and may alter the same at pleasure, and may take, hold, purchase, lease, convey and dispose of any real, personal or mixed estate for the use of said corporation.

§ 3. The legislative authority of said city is hereby vested in a city council, composed of a mayor and board of aldermen, consisting of six members.

§ 4. Every legal voter of the territory who shall have been a resident of the city sixty days next preceding a city election, is declared a citizen of said city, and is entitled to vote at all the elections thereof.

§ 5. The election of city officers shall be in a manner similar to county elections, as near as the nature of the case admits.

§ 6. A person offering to vote may be challenged, as in other elections in the counties, and an oath may be administered to him in like manner, naming the qualifications herein prescribed.

§ 7. No person shall be eligible to any elective office mentioned in this act, unless he be a legal voter of the city, and has been a resident thereof one year next preceding this election.

§ 8. That the qualified electors of said city shall, on the first Monday in March, annually, elect a mayor and six aldermen, an assessor, treasurer and marshal; and aldermen so elected, when assembled together and duly organized, shall constitute the city council, a majority of whom shall constitute a quorum for the transaction of business; they shall be elected for the term of one year and until their successors are elected and qualified, and no member of the council shall receive any pay nor fee for any ordinary services as councilman.

§ 9. It shall be the duty of the mayor to see that the laws and ordinances of the city are executed and their violation punished, to superintend and direct the official conduct of subordinate officers, to sign and seal all commissions, licenses and permits granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of the city, and such as may be granted or imposed by the ordinances of the city, consistent with law.

§ 10. The mayor shall be a conservator of the peace within the city and ex-officio a justice of the peace, and is invested with exclusive or original jurisdiction for the violation of the city ordinances, and with criminal jurisdiction of offenses against the laws of the territory, committed within the city, and with civil jurisdiction limited to the city in the same manner as that of justice limited to counties; he shall not be disqualified from acting in such judicial capacity by any proceedings being in the name or in behalf of the city.

§ 11. Appeals to the district court in the same county shall be allowed from the judgments and decisions of the mayor, in the same case, time and manner as may at any time be allowed by law from those of other justices, and they shall be tried as in other cases, and he shall be entitled to demand and receive the same fees as are at the time allowed by law to justices of the peace. He shall be presiding officer of the city council when present, and shall give the casting vote when there is a tie; in case of his absence, or death, or disability, the council may appoint a mayor pro tempore from their own body, who shall exercise all the duties of mayor during the time of such absence or disability, and until the vacancy be filled or such disability be removed.

§ 12. The council shall be the judge of the qualifications and election of its own members, it may determine the rules of its own proceedings, and shall keep a record thereof, which shall be open to the inspection of every citizen, and may compel the attendance of its members in such manner and by such penalties as it may adopt.

§ 13. The marshal shall be a conservator of the peace, and is the executive officer of the mayor's court, and shall execute and return all processes directed to him by the mayor, and in case of the violation of the city ordinances and of the criminal laws of the territory, may execute the same in any part of the county; and he shall have the same power and authority within the city to quell riots and disturbances, arrest offenders, that the sheriff has within his county, and may, in the same cases, and under the same penalties, require the aid of citizens, and perform all duties imposed by the council. He may with the approval of the council, appoint one or more deputies, and discharge them, and he shall be responsible for their doings when acting officially. For the service of legal process he shall be entitled to the same fees as a constable, and for services required by the council, such compensation as it may allow.

§ 14. The treasurer, clerk of the council, assessor, collector and marshal, shall give such bond, perform such duties and exercise such power as may be required of them by ordinance not inconsistent with the law, which bond shall be approved by the council, and filed with the mayor.

§ 15. In all elections for city officers, the mayor shall issue a proclamation to the voters of the city, naming the time and place of such election and officers to be chosen, and cause a copy to be posted at least ten days previous to the day of election. The polls shall be opened between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon; within two days after election the judges of election shall make out their returns to the president of the city council, who shall examine them at their next meeting, and cause an abstract of the votes to be recorded in a book kept for that purpose.

§ 16. No member of the city council shall be eligible to any office within the gift of the city council, during the term for which he is elected, nor shall he be interested directly or indirectly in the profits of any contract, job or work or services to be performed for the city.

§ 17. Ordinances passed by the city council, shall be recorded in a

book to be kept for that purpose, and shall be signed therein by the mayor, and be attested by the clerk.

§ 18. It is the duty of the clerk to keep a true record of all the proceedings of the city council, and such record shall be open in all business hours for the inspection of any citizen.

§ 19. The mayor, alderman, marshal, treasurer, clerk, assessor and collector, shall respectively take an oath to support the constitution of the United States and the laws of the territory, and faithfully and impartially to perform their duty to the best of their knowledge and ability; other officers shall qualify in such manner as may be prescribed by the city council. The oath of office may be administered by the mayor, or clerk of the council when he is qualified, and in the transaction of the business of the corporation, those officers, and the president for the time being, may administer oaths, which may have the same effect as if administered by the officers authorized therefor.

§ 20. The marshal, clerk, assessor and collector shall receive such fees as the city council shall deem right, not exceeding the amount allowed county or township officers for the same or similar services.

§ 21. The council may hold its meetings as it sees fit, having fixed stated times, or provide the manner of calling them by ordinance, and its meetings shall be public.

§ 22. The council may appoint in such manner as it determines, during its pleasure, a clerk of the council, a collector of taxes, street commissioners, a clerk of the market, city supervisor, health officers, and such other officers as it may deem advisable, and may prescribe their duties, powers and qualifications, and may provide for the election of any such officers by the citizens.

§ 23. When a vacancy occurs in any of the elective officers, the council may fill the vacancy by appointment until the next election and qualification of the successor, and the council shall have the power, by impeachment, for malfeasance in office, to suspend any of the elective officers or councilmen, and a vacancy may be created by such suspension: Provided, that such impeachment be sustained by a vote of two-thirds of the whole council.

§ 24. The city council is invested with power to make ordinances, to secure the inhabitants against fire, against violations of the public peace, to suppress riots, gambling, drunkenness, and indecent behavior in public places, and in general to provide for the safety, prosperity and good order of the city, and the health, morals, comfort and convenience of the inhabitants, and to impose penalties for the violation of its ordinances, not exceeding one hundred dollars for each offense, which may be recovered in a civil action in the name of the city, or by complaint before a justice of the peace, and the laws of the territory relative to carrying into effect a judgment of a justice of the peace imposing a fine, shall be applied to judgments in the above cases.

§ 25. The council is authorized to establish and organize fire companies, and provide them with fire engines, hose and other apparatus, and powers to grant ferry licenses regulated by law within the corporate limits of the city.

§ 26. The council may regulate the keeping and sales of gunpowder within the city.

§ 27. The council shall have exclusive authority to provide for the licensing and prohibition of all exhibitions, shows and theatrical performances and billiard tables, ball and ten pin alleys, and other saloons, but the above authority extends to no exhibition of a purely scientific character; the city council shall also have the power to license and regulate the retailing of intoxicating liquors.

§ 28. The council may make all necessary ordinances in relation to the cleanliness or health of the city, and may require the owners or occupants of lots upon which water becomes stagnant, to drain or fill up the same, and in default thereof after reasonable notice may cause the same to be done at the expense of the city, and assess the cost thereof upon the respective lots and cause them to be sold by the city collector as in case of taxes, and the owner may redeem from such sale as in case of a sale for taxes.

§ 29. The council may regulate the system of cartage, and drayage, hacks and omnibuses within the city, and may issue licenses therefor and may prohibit hogs and other animals from running at large within the limits of the city.

§ 30. The council shall provide by ordinance for the keeping of the public money of the city, and the manner of disbursing the same, and shall cause all claims against the city to be audited, and all city officers are accountable to said city council in such manner as it may direct; the council shall publish annually a particular statement of the receipts and expenditures of the city and of all debts owing to and by the same.

§ 31. The council shall have the exclusive authority to establish the grade of all streets and alleys in the city, and may change the same upon the petition of the owners of two-thirds of the value of the real property on both sides of the street when it is desired to be changed.

§ 32. Imprisonment for the violation of any ordinance shall be in the county jail, but at the expense of the city; the violation of city ordinances may be punished by imprisonment not to exceed ninety days, imposing a fine or sentence to labor at the discretion of the magistrate under the ordinances of the city.

§ 33. The council is authorized annually to levy and collect taxes not exceeding one-half of one per cent of all taxable property within the city as they may prescribe by ordinance.

§ 34. The city council shall before proceeding to collect the taxes give three weeks' notice of the levy and assessment of the tax, and the rate thereof in general terms, with a general description of the property in a newspaper printed in the city.

§ 35. At any time within the time said notice is being published, any person aggrieved by the assessment or taxation, may appear before the council which may correct the same if found erroneous.

§ 36. The tax list so corrected shall be made out by the clerk, and the mayor shall indorse thereon the order to the collector to collect the taxes thereon levied, which shall authorize him to collect the same by levy and sale as on execution.

§ 37. Taxes on real property shall be a lien thereon, and it may be sold therefor when the taxes remain unpaid for six months after the publication of notices of the tax.

§ 38. Such sale must be at auction, and there must be three weeks' notice prior to the sale, given as provided for above, giving notice of the assessment and tax, in such sale he who bids to pay the amount due for the least quantity of land will be the highest bidder, and the manner of ascertaining the least portion bid for shall be determined by ordinance of the city council.

§ 39. The collector of taxes shall execute and deliver to the purchaser a deed running in the name of the city, which shall have the same force and effect as the deed of the proper county officers in like circumstances on sale for county taxes.

§ 40. The council shall have title to and full control of the streets, alleys, wharves, public grounds, squares, parks and commons of the city, and may cause sidewalks to be paved in the same, and to this end may require owners of lots to pave or repair the same contiguous to their respective lots, and in case of neglect after a reasonable time named in the order, the same may be assessed on the contiguous lots, which shall have the same force and effect as a tax levied thereon, and the same may be sold therefor, as for a tax, subject to the same right of redemption.

§ 41. The council are authorized to borrow money for the purpose of carrying into effect any of the objects authorized by this charter, if at a regular or special election under a notice specifying distinctly the nature and objects of the loan, and the amount thereof as nearly as practicable, the voters of the city may determine in favor of the loan, by a majority of two-thirds of the legal voters at said election, and the said loan can in no case be diverted from the specified object.

§ 42. All road tax which may be paid upon any property in said city in lieu of labor or otherwise, shall be paid to the proper authorities of said city for the improvement of the streets thereof.

§ 43. Any person being a resident of said city being subject to the laws of the territory to do work upon the roads and highways, shall be required to do and perform, or cause the same to be done under the direction of the proper authorities, upon the streets of said city, or public roads and highways, leaving streets as said authorities may direct. The city council shall supersede the supervisor in all jurisdiction within the corporate limits of said city.

§ 44. This act is hereby declared to be a public act, and may be read in evidence in all courts of law and equity in this territory, without proof, and all ordinances of the city council may be proved by the book referred to in section seventeen of this act, and when printed and published in book form, and purporting to have been printed by authority of the city council, said ordinances shall be received in all courts and places without further proof.

§ 45. Nothing in this act contained shall be construed so as to affect the tenure of office of any officer of said city elected or appointed previous to its passage.

§ 46. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

Approved November 4, 1858.

FERRIES AND MILL DAMS.

AN ACT

To Authorize Luther Hoadley to Erect and Keep a Mill Dam across the North Fork of the Great Nemaha River.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Luther Hoadley be and is hereby authorized to erect and constantly keep a mill dam across the north fork of the Great Nemaha river near Table Rock in Pawnee county on the southwest quarter of section thirty-four, township three, range twelve, east.

§ 2. The said Luther Hoadley, his heirs and assigns, shall have the perpetual right to keep a dam on said river at the point designated in section one of this act to the height of twelve feet (12), above low water mark, so as to propel mills or any other machinery, that said Hoadley or his heirs or assigns may want to erect.

§ 3. No person shall be allowed by law to build or erect any dam below the point designated in this act so as to interfere with the rights granted in this act to said Hoadley, his heirs or assigns.

§ 4. This act to take effect from and after its passage.

Approved October 19, 1858.

AN ACT

To Authorize certain Parties to Erect a Mill Dam.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That John W. Sayer, George P. Tucker, David McClure, Wm. P. Walker, James S. Daily, Leroy C. Clark, J. D. Heath and C. A. Goshen, their heirs and assigns, are hereby authorized to erect and constantly keep a mill dam across the north fork of the Great

Nemaha river either on the southwest quarter of section number three, or on the northwest quarter of section number ten, township number five, north of range number ten east in Johnson county, upon the land owned by C. A. Goshen.

§ 2. That the said John W. Sayer, George P. Tucker, David McClure, Wm. P. Walker, James S. Daily, Leroy C. Clark, J. D. Heath and C. A. Goshen, their heirs and assigns, shall have perpetual right to keep a dam across said stream at the point designated in section one of this act to the hight of fifteen feet above low water mark so as to propel mills or any other machinery that the said named persons, their heirs or assigns, may wish to erect.

§ 3. No person shall be allowed by law to build or erect any dam at or below the point designated in this act so as to interfere with the rights herein granted to the said persons, their heirs or assigns.

§ 4. This act shall take effect and be in force from and after its passage.

Approved October 19, 1858.

AN ACT

To Authorize Isaac T. Whyte, A. S. Holloyday, Louis Neal and Benjamin Holloyday, to Establish and Keep a Ferry across the Missouri River at Aspinwall, in Nemaha County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That Isaac T. Whyte, A. S. Holloyday, Louis Neal and Benjamin Holloyday, and their associates and assigns, be and are hereby granted the exclusive privilege to establish and keep a ferry across the Missouri river at Aspinwall, in Nemaha county, or at any point two miles below or above said point, for the term of fifteen years.*

§ 2. Said Whyte, Neal, A. S. Holloyday, Benj. Holloyday, and their associates and assigns, shall be allowed the following rates of ferriage:

For two horses, mules or oxen, and wagon.....	\$1.00
each additional pair of mules, horses or oxen, and wagon...	25
“ horse, mule and rider.....	30
“ “ led	25
loose cattle, per head.....	10
each footman.....	10
sheep and hogs.....	5
each 100 pounds freight.....	10
“ 1000 feet lumber.....	2.00

§ 3. It shall be the duty of the above named persons to keep a reliable boat or boats for the safe transportation of passengers and property on said stream, at all reasonable times.

§ 4. Nothing in this act shall be so construed as to conflict with any privilege or privileges heretofore granted.

§ 5. This act to take effect from and after its passage.

Approved October 19, 1858.

AN ACT

To Authorize Richard Kimball and Richard Hogaboom to Establish and Keep a Ferry across the Platte River, at Larimer City, N. T.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Richard Kimball and Richard Hogaboom, their associates and assigns, be and are hereby authorized and empowered to establish and keep a ferry across the Platte river at Larimer city, or at any point two miles above or two miles below said point, with the exclusive privilege for the term of twenty years from the passage of this act.

§ 2. That it shall be the duty of the said Richard Kimball and Richard Hogaboom, their associates and assigns, within four months from and after the passage of this act, to provide good and suitable boat or boats for the speedy and safe transportation of persons and property across said river at all suitable times.

§ 3. That the said Richard Kimball and Richard Hogaboom, their associates and assigns, shall be allowed the following rates of ferriage at said ferry (subject to alteration by the legislature), viz:

For two horses, mules or oxen and wagon,.....	\$1.00
each additional pair of horses, mules or oxen,.....	25
“ horse, mule and rider,.....	30
“ horse, mule and buggy,.....	75
“ led horse or mule,.....	25
loose cattle per head,.....	10
sheep and hogs per head,.....	5
each footman,.....	10
each cwt. of freight,.....	10
lumber per m. feet,.....	2.00

§ 4. That if the said Richard Kimball or Richard Hogaboom, or owners of said ferry, or any person or persons in their employ, shall charge and receive from any person a greater sum for ferriage than is here allowed by law, he or they shall, upon conviction thereof, forfeit and pay to the party aggrieved the sum of five dollars for each offense, and suit for the recovery of the same shall be commenced by civil action in the name of the party so aggrieved.

§ 6. This act to take effect and be in force from and after the date of its passage.

Approved October 22, 1858.

AN ACT

To Authorize Charles M. Greever, C. J. Waddell, and Elias W. Jones, to Establish and Keep a Ferry across the Missouri River at St. Deroin, in Nemaha County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Charles M. Greever, C. J. Waddell and Elias

W. Jones, their associates and assigns, be and are hereby granted the exclusive privilege to establish and keep a ferry across the Missouri River at St. Derooin, in Nemaha county or at any point two miles above or below said point for the term of fifteen years.

§ 2. Said Greever, Waddell and Jones, and their associates or assigns shall be allowed the following rates of ferriage:

For two horses, mules or oxen, and wagon.....	\$1.00
For each additional pair of horses, mules or oxen.....	25
“ horse, mule and rider.....	30
“ “ “ “ buggy.....	75
“ led “ “ horse.....	25
“ loose cattle per head.....	10
“ sheep and hogs per head.....	5
“ footman.....	10
“ 1000 feet lumber.....	2.00
“ cwt pounds freight.....	10

§ 3. It shall be the duty of said Greever, Waddell and Jones, to keep a suitable boat or boats for the safe transportation of persons at all reasonable times.

§ 4. This act to take effect from and after its passage, provided, however, that nothing in this act shall be so construed as in anywise to impair any rights or privileges heretofore granted by the legislature of this territory.

Approved October 22, 1858.

AN ACT

To Incorporate the Beatrice Bridge and Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Joseph Weston, Albert Towle, Bennet Pike, Henry M. Reynolds, David Taylor, and John McConihe, their heirs and assigns, are hereby created a body corporate and politic, under the name and style of the Beatrice bridge and ferry company, and by that name and style shall have all the rights and privileges of a corporate association, for the term of fifteen years: Provided, that nothing herein contained shall be so construed as to confer upon the said corporation the right to issue notes or paper for general circulation, nor any powers and privileges of a banking corporation.

§ 2. It shall be the duty of said corporation to keep a suitable bridge or boat over or upon the Big Blue river, in Gage county, at any point upon said river, within two miles north or south, or at the town of Beatrice in said county, where the same strikes said Blue river, within six months after the passage of this act.

§ 3. The rates of toll and ferriage within the above mentioned points, under the direct jurisdiction of said company, shall not be more than the following:

For two horses, mules or oxen.....	\$0.50
each additional pair of horses, etc.,.....	15
each horse, mule and buggy.....	25
loose cattle, per head.....	5
sheep and hogs, per head	5
footmen	5
freight, per cwt. (extra).....	5

§ 4. A list of the above rates shall be placed upon some conspicuous place on either side of said river, convenient to said crossing, and if the owner or owners shall tax and receive from any person any more than the above rates, upon conviction thereof shall forfeit and pay to the party aggrieved, the sum of ten dollars for each offense.

§ 5. No privileges or powers granted by this act, shall be so construed as to preclude or interfere with the rights and authority of the town of Beatrice to build and maintain a free bridge at any time over said river at said town.

§ 6. This act shall take effect and be in force from and after its passage.

Approved October 22, 1858.

AN ACT

To Authorize John H. S. Grove and Charles F. Putnam to Keep and Run a Ferry across the Missouri River at Ponca Landing, in the County of Dakota, Territory of Nebraska.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That* John H. S. Grove, Charles F. Putnam, their associates, heirs and assigns, shall have for the period of ten years from the passage of this act, the exclusive privilege of keeping a ferry across the Missouri river for the purpose of crossing the same at Ponca landing, in the county of Dakota, and territory of Nebraska.

§ 2. That said exclusive right shall extend two miles each way from the point above mentioned, and it shall be unlawful for any person or persons to keep or run a ferry of any description within said limits.

§ 3. The said John H. S. Grove and Charles F. Putnam shall as soon as the opposite bank of the river is purchased by the general government, place or cause to be placed at said point a good and sufficient flat boat for the purpose of crossing all persons and property at all times when the said river is passable.

§ 4. The said parties shall within six months from the passage of this act file with the clerk of the county in which said place is located, a good and sufficient bond with one or more sufficient sureties, in the sum of two hundred dollars to be approved by said clerk, for the faithful performance of their duties as ferrymen, in accordance with the provisions of this act.

§ 5. All acts and parts of acts conflicting with this act are hereby repealed.

§ 6. The rates of ferriage shall be the same as are prescribed in an act to establish a ferry at Laramie, approved February 10, 1857.

§ 7. This act shall take effect and be in force from and after its passage.

Approved October 26, 1858.

AN ACT

To Authorize H. C. Crawford, A. A. Patridge, John Russell, L. E. Goodell, Harlan Baird, Hugh Compton and S. P. Baltzley, to Keep a Ferry across the Missouri River.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That H. C. Crawford, A. A. Patridge, John Russell, L. E. Goodell, Hugh Compton, and S. P. Baltzly are hereby authorized to establish and keep a ferry across the Missouri river, in Dixon county, beginning at a point directly opposite the mouth of the Vermillion river, and extending half way to the northwest corner of the town of Concord in said county, and two miles below said point on said Missouri river, for the term of twenty years from and after the passage of this act.

§ 2. It shall be the duty of said corporation to procure and keep a suitable boat or boats for the safe and speedy transportation of persons and property over said river at all reasonable times.

§ 3. The rates of ferriage shall be the same as prescribed in "An act to authorize William Corfield to keep a ferry on the Missouri river at the town of Rock Bluffs, in the county of Cass, Nebraska territory," as approved March 6, A. D. 1855.

§ 4. This act to take effect, and be in force from and after its passage.

Approved October 30, 1858.

AN ACT

To Authorize Thomas Patterson or Assigns to Erect a Mill Dam across Rock Creek.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Thomas Patterson be and is hereby authorized to erect and constantly keep a mill dam across Rock creek, on the northwest quarter of section seventeen, township eleven, north of range fourteen, east of the sixth principal meridian.

§ 2. That Thomas Patterson, his heirs and assigns, shall have the perpetual right to keep a dam on said creek, at the point designated in section one of this act, to the height of twelve feet above low water mark, so as to propel mills or any other machinery that said Patterson or his heirs or assigns may want to erect: Provided, the said privi-

lege shall not be construed in any way to interfere with the rights of other parties.

§ 3. No person shall be allowed by law to build or erect any dam below the point designated in this act, so as to interfere with rights granted in this act to Thomas Patterson, his heirs and assigns.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Authorize George W. Hunt to Keep a Mill and Mill Dam across the South Branch of Weeping Water in Cass County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That* Geo. W. Hunt is hereby authorized to keep a mill dam across the south branch of Weeping water, in the northwest quarter, section twenty-seven, in township number ten, north of range number thirteen, east.

§ 2. The said George W. Hunt his heirs and assigns, shall have perpetual and exclusive right to keep a mill and mill dam across said stream at the place designated in section one of this act: Provided, said dam when finished shall not exceed fifteen feet high above low water mark.

§ 3. Nothing in this act shall be so construed as in any way to impair any rights or privileges heretofore granted by the legislature to other parties on the same river.

§ 4. This act to take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Grant a Ferry Charter at the Town of Hoobrah across the Missouri River.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That* J. S. Gregory and his associates are hereby empowered and authorized to establish and keep a ferry across the Missouri river at the town of Hoobrah for the term of fifteen years.

§ 2. The said Gregory and his associates shall have the exclusive privilege to keep and run said ferry at said point, and for said period of time, and said exclusive privilege shall be confined to the following limits, beginning at the point where Ponca creek empties into said river and to extend for two miles above and two miles below, along said river.

§ 3. The rates of ferriage shall be the same as those established in

“ an act to authorize Edward P. Stout and associates to run and keep a ferry across the Missouri river at De Sota.”

§ 4. This act to take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Incorporate the Frankfort Town and Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Joachim Oesterling, Charles Rosstoucher, H. Adolph Mauksch, Charles Long, Seigfried Loeber, Harlam Baird, J. S. B. Todd and S. T. Davis, their associates and successors, be and they are hereby created a body politic and corporate, under the name and style of the Frankfort town and ferry company, and by that name may sue and be sued, plead and be impleaded, defend and be defended against, may grant and receive by its corporate name, purchase and sell, hire and lease property, real, personal and mixed in all lawful ways, may have a common seal and alter the same at pleasure, and may make such by-laws and rules for the regulation of its affairs, as shall not be inconsistent with the constitution of the United States and the laws of this territory.

§ 2. The corporate business of said company shall be managed by a board of five directors, who shall be stockholders and chosen by the stockholders and the board of directors shall choose a president, secretary and treasurer who shall hold their respective offices for one year and until their successors shall be chosen and qualified.

§ 3. The capital stock of said company shall be thirty-four thousand dollars, divided into shares of four hundred dollars each, the certificates of which shall be signed by the president and secretary and countersigned by the treasurer. The floating debt shall at no time exceed ten per cent on the capital stock.

§ 4. The said company shall have the exclusive privilege for the term of fifteen years to keep and run a ferry across the Missouri river at Frankfort and also extending by way of the river, two miles below the same and may connect with any company, organized for the same purpose within the territory of Dakota: Provided that no privileges herein granted shall conflict with rights and privileges heretofore granted any other company or companies at this or any previous session of the legislature. Within one year after the passage of this act, the said company shall procure and keep a suitable boat or boats for the safe transportation of property and persons across said river at all reasonable times and when navigation is not dangerous.

§ 5. The premises situated in the county of L'Eau qui court, comprising the north half section seventeen (17), and all of fractional section eight (8), in township thirty-three (33), north range two (2), west, and all additions which may be made thereto according to law are hereby incorporated under the name of the town of Frankfort and

when a majority of the legal votes resident therein shall desire a municipal organization they shall proceed in with the provisions of "an act for revising, consolidating and preparing a general code of the territory of Nebraska" chapter twelve, incorporations of towns approved January 25, A. D. 1856.

§ 6. Nothing in this act shall be construed as to give to the company the power of the privileges of banking.

§ 7. This act to be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Authorize S. B. Stough, Henry A. Fuller and Adam Smith, to Erect a Mill Dam across Aowaye Creek, at Ponca, Dakota County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That S. B. Stough, Henry A. Fuller and Adam Smith, their heirs and assigns, be and they are hereby authorized to erect and constantly keep a mill dam across Aowaye creek, at the town of Ponca, Dakota county, Nebraska territory.

§ 2. The said S. B. Stough, Henry A. Fuller and Adam Smith, their heirs and assigns, shall have perpetual right to keep a dam across said stream at the point designated in section one of this act, to the height of twelve feet above low water mark, provided said parties shall erect and keep a mill at said point.

§ 3. No person shall be allowed, by law, to build or erect any dam at or below the point designated in this act, so as to interfere with the right herein granted to said S. B. Stough, Henry A. Fuller and Adam Smith, their heirs and assigns.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Authorize R. W. Frame to Keep a Ferry across the Missouri River, at Peru, Nemaha County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Robert W. Frame, his heirs and assigns, be and are hereby authorized and empowered to establish and keep, and shall have the exclusive privilege of keeping a ferry across the Missouri river at Peru, Nemaha county, Nebraska territory, for the transportation of persons and property, for the term of fifteen years from and after the passage of this act.

§ 2. That said exclusive privilege shall extend from a point on the

levee opposite where now stands the saw mill known as Daily's, up the Missouri river a distance of two miles, and from the same point down the river a distance of two miles, and it shall be unlawful for any person or persons to keep or run a ferry of any description within said limits.

§ 3. That the said R. W. Frame, his heirs and assigns, shall, immediately after the passage of this act, place or cause to be placed a good and sufficient steam ferry boat, for the purpose of crossing all persons and property when the navigation of the river will permit.

§ 4. That the said R. W. Frame, his heirs and assigns, shall be allowed the following rates of ferriage:

For two horses, mules or oxen, and wagon.....	\$1.00
each extra pair.....	25
“ horse or mule, and rider.....	25
two horses, mules or buggy.....	75
each led horse or mule.....	15
loose cattle, per head.....	10
hogs and sheep per head.....	5
footmen.....	5
each cwt of freight.....	10
single horse or mule, and cart, sleigh or buggy.....	50

§ 5. That if the said R. W. Frame, his heirs and assigns, or any person or persons in their employ, shall charge and receive from any person a greater sum for ferriage than is herein allowed by law, he or they shall upon conviction thereof forfeit and pay to the party aggrieved the sum of ten dollars for each offence; and suit for the recovery of the same shall be commenced by civil action, in the name of the party so aggrieved, before any justice of the peace of the proper county.

§ 6. This act to take effect and be in force from and after the date of its passage.

Approved November 3, 1858.

AN ACT

To Establish a Ferry across the Platte River, near the Mouth of Salt Creek.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That John Gregg, William Knight, M. I. Shields, their associates and assigns, be and are hereby authorized and empowered to establish and keep a ferry across the Platte river, at the mouth of Salt creek, or at any point three miles above or three miles below, for the term of ten years from the passage of this act.

§ 2. That it shall be the duty of the said John Gregg, William Knight and M. I. Shields, their associates and assigns, within six months from the passage of this act, to provide good and suitable boats

for the speedy and safe transportation of persons and property across said river at all suitable times.

§ 3. This act to be in force and take effect from and after its passage.
Approved November 4, A. D. 1858.

AN ACT

To Incorporate the Cuming City Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That P. G. Cooper, John W. Cooper, James Hardy E. T. Harding, G. A. Bingham, T. A. Davis and L. M. Kline, their associates and assigns, are hereby authorized to keep and run a ferry across the Missouri river opposite the mouth of Soldier creek, or at any point two miles below or four miles above said point, to the exclusion of all other persons, for the term of eighteen years.

§ 2. Said persons and their associates and assigns are hereby created a body corporate and politic, and under the name and style of the Cuming city ferry company, shall have power to sue and be sued, plead and be impleaded, to purchase and sell real and personal property, for the purpose of carrying on said ferry, to have, keep, and use a common seal, and the same to alter at pleasure, and to do all and any other business incident to corporations of a like character.

§ 3. Said corporation shall be allowed the following rates of ferriage at said ferriage subject to alteration by the Legislature, viz :

For two horses, mules or oxen and wagon.....	\$1.00
For each additional pair of horses, mules or oxen.....	25
“ horse or mule and rider.....	30
“ “ “ buggy.....	75
“ led horse or mule.....	25
“ loose cattle per head.....	10
sheep and hogs per head.....	5
each footman.....	10
“ cwt of freight.....	10
lumber per M.....	2.00

§ 4. That if said company or any person or persons connected, in their employ shall charge and receive from any person a greater sum for ferriage than is here allowed by law, he or they shall upon conviction thereof, forfeit and pay to the party aggrieved the sum of ten dollars for each offense, and suit for the recovery of the same shall be commenced by a civil action in the name of the party so aggrieved.

§ 5. That an act entitled an act to authorize P. G. Cooper and associates to establish and keep a ferry across the Missouri river at Cuming city, be and the same is hereby repealed.

§ 6. This act to take effect and be in force from and after its passage.
Approved November 4, 1858.

AN ACT

To Incorporate the Freemont Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Robert Kittle, John A. Kuntz, William Throckmorton, E. A. Donelan and William E. Lee, their associates and assigns, be and are hereby declared a body corporate, under the name and style of the Freemont ferry and bridge company, and by that name and style said company may sue and be sued, plead and be impleaded, grant and receive by its corporate name, and purchase and sell, hire and lease property, real, personal and mixed in all lawful ways; may have a common seal, and alter the same at pleasure, and make all by-laws for the regulation of its business not inconsistent with the laws of the United States or the laws of this territory.

§ 2. The business of the company shall be managed by a board of directors, of not less than three nor more than five, who shall be stockholders, and from their number they shall elect a president and treasurer, who shall hold their offices for one year, or until their successors are elected and qualified.

§ 3. This company shall have exclusive right to keep a ferry and build a toll bridge across the Platte river, at the Freemont island, opposite the town of Freemont, Dodge county, N. T., or at any suitable point within three miles of said island, either up or down on said river, for the period of fifteen years, and the rates of ferriage to be charged by said corporation shall be fixed by the board of county commissioners of Cass county.

§ 4. It shall be the duty of said company, to procure within two years and keep a suitable boat or boats or toll bridge, for the safe and speedy transportation of persons and property over said river at all suitable times, or they shall forfeit all rights under this charter.

§ 5. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

Authorizing Joel H. Johnson to Keep and Run a Ferry across the Loup Fork of the Platte River, at the Town of Genoa, in Monroe County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Joel H. Johnson, his associates, heirs or assigns, shall have for the period of twenty-five years from the passage of this act the exclusive privilege and right of keeping a ferry on the Loup fork of Platte river, for the purpose of crossing the same, at the town of Genoa, in Monroe county.

§ 2. Said exclusive right and privilege shall extend five miles each way from the mouth of Beaver river.

§ 3. That said Joel H. Johnson shall within six months from the passage of this act, place or cause to be placed at said point a good and sufficient boat or boats, for the purpose of crossing safely all persons and property, at all times when the said Loup Fork river is passable.

§ 4. That said Joel H. Johnson, his associates, heirs or assigns, shall be allowed the following rates of toll at said ferry:

For two horses, mules or oxen and wagon, ...	\$1.50
each additional pair, ...	75
horse, mule and buggy, ...	1.00
each led horse and mule, ...	30
loose cattle, per head, ...	25
sheep and hogs per head, ...	10
each footman, ...	10
“ cwt of freight, ...	10
“ one thousand feet of lumber, ...	2.50

§ 5. That a list of the above rates shall be placed on the ferry boat, or in some conspicuous place near the landing, and said rates shall be charged at all reasonable times, and if the owner or owners of said ferry shall tax or receive from any person a greater sum than is herein allowed for ferrying, he shall on conviction thereof forfeit and pay to the party aggrieved the sum of ten dollars for each offence to be recovered by a civil action in the name of the party so aggrieved.

§ 6. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Incorporate the Blue Springs Bridge and Ferry Company.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That Henry Elliott, Albert Towle, Bennet Pike and J. B. Weston, their heirs and assigns, are hereby created a body corporate and politic under the name and style of the Blue Springs bridge and ferry company, and by that name and style shall have all the rights and privileges of a corporate association for the term of fifteen years: Provided, that nothing herein contained shall be so construed as to confer upon the said corporation the right to issue notes or paper for general circulation, nor any powers or privileges of a banking corporation.*

§ 2. It shall be the duty of said corporation to keep a suitable bridge or boat over or upon the Big Blue river at Blue springs, in Gage county, on the east half of the northeast quarter of section seventeen, township two, range seven, east, or any point three miles above or below said point above designated, within six months after the passage of this act.

§ 3. The rates of toll and ferriage within the above mentioned points,

under the direct jurisdiction of said company, shall not be more than the following:

For two horses, mules, or oxen and wagon,.....	\$0.50
each additional pair of horses, &c.,.....	15
each horse, mule and buggy,.....	25
loose cattle, per head,.....	5
sheep and hogs, per head,.....	5
footman, ...	5
freight, per cwt. (extra),.....	5

§ 4. A list of the above rates shall be placed upon some conspicuous place on either side of said river, convenient to said crossing, and if the owner or owners shall tax and receive from any person any more than the above rates, upon conviction thereof, shall forfeit and pay to the party aggrieved the sum of ten dollars for each offense.

§ 5. No privileges or powers granted by this act shall be so construed as to infringe upon any charter heretofore granted.

§ 6. This act to take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Amend an Act entitled "An Act to Establish a Ferry across the Missouri River, at the Mouth of the Little Nemaha River," Approved March 9, 1855.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That an act entitled "an act to establish a ferry across the Missouri river at the mouth of the Little Nemaha," approved March 9, 1855, be and the same is hereby amended as follows, viz:

In section one, third line, strike out the words "Maland Beard, John Beard, their," and insert in place thereof, "Allen L. Coate and his."

In section two, add after the word "ferry," in the last line, the words "for a period of fifteen years from and after the first day of November, 1858."

Also, after the word "territory," in last line of section three, add the following: "Said Allen L. Coate and his associates are hereby required to execute and deliver to the probate judge of Nemaha county a bond in the penal sum of five hundred dollars, conditioned that they will keep a good and sufficient boat, and be in readiness at all suitable times to cross persons and property."

§ 2. This act to take effect and be in force from and after the first day of November, 1858.

Approved November 4, 1858.

AN ACT

To Authorize O. A. Hinebaugh and others to Build a Mill Dam across Maple Creek.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That O. A. Hinebaugh, Henry C. Campbell and Thomas Fitzsimmons, their heirs or assigns, be and the same are hereby declared to be a body corporate for the purposes hereinafter provided.

§ 2. The above mentioned corporation are hereby authorized to build and constantly keep a mill dam across Maple creek, in Dodge county, on the west half of section five, township eighteen, north range eight, east of the sixth principal meridian, Nebraska territory.

§ 3. The said dam shall never be made to exceed the height of ten feet above ordinary low water mark on said creek, and that the said incorporators shall be permitted to enjoy all privileges necessary to enable them to use said dam for propelling any machinery which they may erect.

§ 4. No person or persons shall have any right to build a dam on said creek, which will cause the water to flow back so as to interfere with the rights granted by this act.

§ 5. This act shall take effect and be in force from and after its passage.
Approved November 4, 1858.

AN ACT

To Establish a Ferry across the Missouri River at a Point opposite to Strik-the-rees Camp, in Minnesota Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That G. L. Roberts, Harlon Baird, C. T. Holloway, and their associates, be and are hereby authorized to keep and establish a ferry at said point, and shall have the exclusive right of ferriage for a period of fifteen years.

§ 2. The privilege of exclusive ferriage shall be confined to the following limits: beginning at a point on said river opposite J. V. Parker's house, and continue along said river two miles above and two miles below.

§ 3. The rates of ferriage shall be the same as those authorized to be charged by an act to authorize Edward P. Stout and associates to run and keep a ferry across the Missouri river at De Soto.

§ 4. This act to take effect and be in force from and after its passage.
Approved November 4, 1858.

SCHOOLS.

AN ACT

To Incorporate a University to be Located in Cass County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That George Loomis, W. H. Good, Moses F. Shin, S. F. Nuckolls, Loudon Mullen, Fenner Ferguson, Thomas H. Benton, Jr., Charles Hendrick, J. M. Chivington, J. Guyler, John H. Sahler and John Evans, be and they are hereby constituted a body politic and corporate for the purpose of founding, directing and maintaining an institution of learning to be styled the trustees of the university, and in manner hereinafter prescribed to have perpetual succession with full power to sue and be sued, plead and be impleaded, to recover, acquire, hold, possess and convey property, real, personal and mixed to the extent of university buildings, library, apparatus and fixtures and university grounds not to exceed forty acres, and all property set apart and hold for the endowment of professorships or for the increase of library or apparatus, said property and the proceeds thereof to be applied to educational purposes in this territory, and any diversion of the powers herein conferred, and of any property which said corporation may acquire to any purpose other than those named in this act to work a forfeiture to the franchise and powers hereby granted, and the said corporation is hereby authorized and empowered to execute any trust confided to them, to carry out the objects of this act subject to the limitation herein contained, to use, manage and control all such property in their discretion for the purposes herein contemplated, to adopt, use, and change a common seal at pleasure, to establish and confer any degree or degrees of merit or honor, and to have and exercise all other powers that may be necessary to carrying out the objects and intentions of this act; they may adopt such by-laws rules and regulations as they may deem proper for their own gov-

ernment and for the government of the institution, not inconsistent with the constitution and laws of the United States, and the territory (or state) of Nebraska, a majority of said trustees shall form a quorum for the transaction of business.

§ 2. Said trustees at their first meeting shall be divided into four classes of three in each class, which classes shall hold their office for one, two, three and four years respectively, the persons to belong to each class to be determined by lot; their successors shall be appointed by the annual conference of the Methodist Episcopal church within whose bounds said institution may be located, and shall hold their office for four years from the expiration of the term of their predecessor: Provided, that the power to fill said vacancy may by vote of the board be divided with other annual conference of said church, all of said trustees and their successors shall hold their office until their successors shall be elected.

§ 3. Said board of trustees shall have power to fill the blank in the name and style of this corporation, by resolution, and its publication in any newspapers in this territory.

§ 4. All the property of said institution held in accordance with the provisions of section first shall forever be free from taxation for any and all purposes whatsoever.

§ 5. This act shall be deemed a public act and shall be in force from and after its passage.

I hereby certify that the foregoing bill having been in the possession of the governor, more than three days (Sunday excepted) after the same was presented to him, has become a law.

Witness, my hand and the great seal of the territory hereunto [L. s.] affixed. Done at Omaha city this twenty-third day of October, 1858.

J. STERLING MORTON,
Secretary of Nebraska.

AN ACT

To Incorporate a Seminary to be Located in Cass County, Nebraska Territory.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska, That* Moses F. Shinn, Loudon Mullen, J. M. Chivington, T. H. Benton, Jr., A. D. Jones, W. D. McCord, C. Nuckolls, T. Jones, H. P. Bennet, Wm. Armstrong, D. H. Pilefish, and W. R. Demarest, be and they are hereby constituted a body politic and corporate, for the purpose of founding, controlling and maintaining an institution of learning in Cass county, to be styled the trustees of — seminary; and in manner hereinafter prescribed to have perpetual succession, to sue and be sued, plead and be impleaded, to receive, acquire, hold, possess and convey property, real, personal and mixed, to the extent of seminary buildings, library, apparatus and fixtures, seminary

grounds not to exceed forty acres, and all property set apart and held for the endowment of professorships or for the increase of library or apparatus; said property and the proceeds thereof to be applied to educational purposes in this territory, and any diversion of the powers herein contained and of any property which said corporation may acquire, to any purposes than those named in the act, to work a forfeiture of the franchises and powers hereby granted, and the said corporation is hereby authorized and empowered to execute any trust confided to them, to carry out the objects of this act subject to the limitation herein contained, to use, manage and control all such property in their discretion, to adopt, use and change at pleasure a common seal, and to have and exercise all other powers that may be necessary for carrying out the objects and intentions of this act. They shall have power to adopt by-laws, rules and regulations, for their government and for the government of the institution, not inconsistent with the constitution and laws of the United States, or of the territory (or state) of Nebraska. A majority of said trustees shall form a quorum for the transaction of business.

§ 2. Said trustees at their first meeting shall be divided into four classes of three in each class, which classes of trustees shall hold their offices respectively for one, two, three and four years, the persons to belong to each class to be determined by lot. Their successors shall be appointed by the annual conference of the Methodist Episcopal church within whose bounds the institution shall be located, and shall each hold their office for four years from the time of the expiration of the term of his predecessor; all of said trustees and their successors shall hold their office until their successors shall be elected.

§ 3. Said board of trustees shall have power to fill the blank in the name and style of this corporation, by resolution and its publication in any newspaper in this territory.

§ 4. That all of the property of said corporation or institution held in accordance with the provisions of section first, shall forever be free from taxation for any purposes whatsoever.

§ 5. This act shall be deemed a public act, and shall take effect and be in force from and after its passage, and continue in force, providing seminary buildings be completed and opened for educational purposes within the term of five years; otherwise, the privileges and powers herein granted shall be forfeited.

I hereby certify that the foregoing bill having been in the possession of the governor more than three days (Sundays excepted), after the same was presented to him, has become a law.

Witness my hand and the great seal of the territory hereunto [l. s.] affixed. Done at Omaha city, this twenty-third day of October, 1858.

(Signed), J. STERLING MORTON,
Secretary of Nebraska.

AN ACT

Amendatory of An Act Entitled "An Act to Incorporate the Nebraska University."

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That Reuben Gaylord, Isaac E. Heaton, Silas J. Francis, J. M. Taggart, Benjamin L. Keyes, Thomas Gibson, Rufus Brown, John H. Kellom, E. B. Hurlbut, Reuben Lovejoy, Perkins Allen, E. H. Barnard, T. W. Tipton, Sullivan Taylor, Luther Hoadly, and their successors, be and are hereby created a body politic and corporate, by the name and style of the board of trustees of the Nebraska university.

§ 2. That this university be and hereby is located in the city of Fontenelle.

§ 3. The object of said corporation shall be, the promotion of the general interests of education, by the cultivation and development of the physical, intellectual and moral powers, and to qualify youth of both sexes to engage in the several pursuits and employments of society, and to discharge honorably and usefully the various duties of life.

§ 4. The board of trustees shall have power to choose from their own number, one executive committee, and appoint such agents and other officers as they may deem necessary, and such officers, professors and teachers as the government and instruction of the university may require, and prescribe their duties, to remove any of them for sufficient reasons, and prescribe and direct the course of studies to be pursued in the institution.

§ 5. The trustees of this institution shall be elected by ballot, by the congressional association of Nebraska, at their annual meeting. The first third of the above named trustees, shall hold their office for one year, from October, 1858, the second third for two years, and the remainder for three years, from the same time, and thereafter in each year one-third of the whole number of trustees (which shall never exceed twenty-one), exclusive of the president, principal or presiding officer of said institution, who shall be ex-officio a member of the board, shall be elected to hold their office for three years, or until their successors are elected; one third of the number of trustees at any given time shall constitute a quorum for the transaction of business. The association shall have power to fill any vacancy that may occur in the board, by death, resignation or removal from the territory.

§ 6. Sections one, two, three, five, six, seven, eight, eleven, twelve and thirteen of an act entitled "an act to incorporate the Nebraska university," passed at the first session of the legislature of Nebraska, be and the same are hereby repealed.

§ 7. This act shall take effect and be in force from and after its passage, and it shall be deemed a public act, and shall be construed liberally by the courts for the purposes therein expressed.

Approved October 25, 1858.

APPROPRIATIONS.

AN ACT

Relating to the Salaries of the Territorial Auditor and Treasurer.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the salary of the auditor of the territory shall be eight hundred dollars, annually, to be audited like other claims on the territory, and paid quarterly.

§ 2. The salary of the treasurer of the territory shall be four hundred dollars, annually, to be audited like other claims on the territory, and paid quarterly.

§ 3. All acts and parts of acts conflicting with this act are hereby repealed.

§ 4. This act to take effect and be in force from and after its passage.
Approved October 14, 1858.

JOINT RESOLUTION

Relative to the Publication of the Criminal Code.

Resolved, by the Council and House of Representatives of the Territory of Nebraska, That the auditor of the territory is hereby instructed to have published immediately, one insertion in one newspaper in the city of Omaha, the criminal code, passed at the extra session of the general assembly, at a price not to exceed sixty-five cents per thousand ems, the expense attending such publication to be paid out of the territorial treasury.

It shall be the duty of the territorial auditor, immediately upon the passage of this act, to give notice, in writing, to all the publishers of newspapers in the city of Omaha, and receive from said publishers proposals for doing said printing, and the person offering to do the printing for the lowest price, shall be awarded the work, which shall not exceed the cost of seventy-five dollars.

Approved October 18, 1858.

JOINT RESOLUTION

To Compensate S. M. Curran for Copying, Indexing and Superintending the Printing of the Journals of the Council and House of Representatives of the Fourth General Assembly of the Territory of Nebraska.

Whereas, S. M. Curran, chief clerk of the house of representatives for the session of 1857, having been appointed by the secretary of the territory, to copy, index and superintend the printing of the journals of the council and house of representatives of the fourth general assembly of the territory of Nebraska, and

Whereas, The said S. M. Curran, did, in compliance with the duties of his said appointment, performed the labors incident thereto, therefore be it

Resolved, By the the council and house of representatives of the territory of Nebraska, that the territorial auditor be and is hereby instructed to issue warrants upon the territorial treasury for the sum of eight hundred dollars (\$800) in payment thereof.

Approved October 29, 1858.

AN ACT

To Renumerate William S. Walker for Services Rendered in Copying the Criminal Code.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska.* That the auditor of the territory be and is hereby authorized to issue to William S. Walker, warrants for the sum of fifty dollars, as compensation for services rendered the territory, in preparing and copying the criminal code.

§ 2. This act shall take effect and be in force from and after its passage.

Approved October 30, 1858.

AN ACT

To Provide for the Copying, Indexing, and Proof-Reading of the Journals and Laws passed at the Extra and Regular Sessions of the Legislature of Nebraska during the Year 1858.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That Sterritt M. Curran, chief clerk of the council, and Erastus G. McNeely, chief clerk of the house, be and the said persons are hereby authorized to copy, index, and read the proof-sheets preparatory to the publishing of the same, of the journals and laws passed at the extra and regular sessions of the legislature of Nebraska during the year 1858.

§ 2. Said persons shall each be allowed as compensation for the performance of such service, the sum of four hundred dollars, to be paid out of the treasury of the territory, upon the warrants of the territorial auditor.

§ 3. This act to take effect and be in force from and after its passage.

Approved November 1, 1858.

JOINT RESOLUTION.

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That the enrolling and engrossing clerks of the present session of the legislative assembly be allowed six dollars per day in territorial warrants, for services during the time they may be employed by said legislative assembly.

Approved, November 2, 1858.

JOINT RESOLUTION

To Pay Mileage and Per Diem of E. S. Dundy.

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That E. S. Dundy is entitled to the sum of ninety dollars as mileage and per diem up to the time of obtaining his seat in this body, and that the territorial auditor is hereby authorized to issue a warrant in favor of said E. S. Dundy, for the above named amount.

Approved November 2, 1858.

AN ACT

For the Relief of Margaret Cuming.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the territorial auditor be, and is hereby, authorized to issue a warrant upon the territorial treasurer for the sum of sixteen hundred dollars in favor of Margaret Cuming, to be paid out of funds not otherwise appropriated; the same when paid, to be payment in full of all demands against the territory of Nebraska, for sums of money paid out by Thomas B. Cuming on the order of the legislature at various times and disallowed by the general government.

§ 2. This act to take effect from and after its passage.

Approved November 2, 1858.

JOINT RESOLUTION

For the Determination and Adjudication of the Claims of the Code Commissioners of 1855, and their Clerks.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That the claim for services as code commissioners of O. D. Richardson, J. D. N. Thompson and J. L. Sharp, who were appointed under a joint resolution of the two houses of the legislature of Nebraska, of the first day of March, 1855, together with the claims of the clerks employed by them in the business of the commission, be referred for determination and adjudication to the judges of the supreme court, or a majority of them, and such determination and adjudication, when made, shall be reported by them to the auditor of the territory, who shall thereupon draw warrants on the territorial treasury for the same.

Approved November 3, 1858.

AN ACT

To Provide for Repairing the Military Road at the Elkhorn Bridge.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the sum of five hundred dollars be, and the same is hereby appropriated for the purpose of repairing the military road at the bridge across Elkhorn river.

§ 2. That John A. Steinberger is hereby appointed a commissioner to superintend and direct the making of said repairs, and before entering upon the discharge of his duties, he shall give a bond for the sum of one thousand dollars, with two good and sufficient sureties, conditioned for the faithful performance of the work on said road, which bond shall be subject to the approval of the territorial auditor, and filed in his office.

§ 3. Said commissioner shall receive three dollars per day for his services, when actually employed. He shall employ workmen to execute said repairs, and have the same completed at as early a day as possible.

§ 4. The territorial auditor is hereby authorized to issue warrants on the treasurer for the payment of the repairs on said road, not to exceed the amount hereby appropriated.

§ 5. Said commissioners shall, after the completion of said repairs, make a report to the territorial auditor, of the work and expenditures on said road, and shall, on a satisfactory settlement of his accounts, be discharged from his bonds.

§ 6. This act to take effect and be in force from and after its passage.

Approved November 3, 1858.

JOINT RESOLUTION.

To Compensate William A. Gwyer, Jun., Page of the Council, for Services Rendered.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That the territorial auditor be and he is hereby authorized to issue territorial warrants to the amount of eighty dollars, in favor of William A. Gwyer, Jun., for services rendered as page of the council.

Approved November 3, 1858.

JOINT RESOLUTION.

To Compensate T. H. Robertson for Services Performed.

Be it resolved by the Council and House of Representatives of the Territory of Nebraska, That the territorial auditor be and is hereby authorized to issue a warrant on the territorial treasury in favor of T. H. Robertson, for the sum of thirty dollars (\$30), which amount is payment in full for printing one thousand (1000) copies of a joint memorial and resolution to congress relative to a land grant for rail road purposes.

Approved November 4, 1858.

JOINT RESOLUTION.

To Compensate Henry Crowell, Page of the House of Representatives, for Services Rendered.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That the territorial auditor be and he is hereby authorized to issue territorial warrants to the amount of eighty dollars, in favor of Henry Crowell, for services rendered as page of the house of representatives.

Approved November 4, 1858.

JOINT RESOLUTION

Relative to Compensation of H. M. Judson for Services in Copying Civil Code.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That the territorial auditor be, and he is hereby, instructed to issue territorial warrants to the amount of twenty-five dollars to Henry M. Judson, for services in assisting to copy the civil code passed at the present session of the legislative assembly.

Approved November 4, 1858.

AN ACT

To Remunerate James W. Van Nostrand for Services Rendered to to the Committee on Judiciary in the House of Representatives.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the treasurer of the territory of Nebraska is hereby authorized and required to pay to James W. Van Nostrand, out of any moneys in the treasury not otherwise appropriated, the sum of forty dollars, and in case no funds are in the treasury, the auditor is hereby authorized to issue territorial warrants for the payment of the same.

§ 2. This act shall take effect. and be in force from and after its passage.

Approved November 4, 1858.

COUNTY SEATS AND BOUNDARIES.

AN ACT

To Establish Permanently the County Seat of Richardson County by a Vote of the People.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the board of county commissioners of Richardson county and territory of Nebraska shall cause an election to be held on the first Monday in December, A. D. 1858, at the different voting precincts in said county, for the purpose of permanently locating the county seat of said county, and for this purpose each voter may designate upon his ballot, the place of his choice for the county seat, and when the votes shall have been returned and canvassed according to law, the place having a majority of all the votes polled, shall be the permanent county seat of said Richardson county, and public notice thereof shall be given within twenty days thereafter by the board of county commissioners, by posting up notices in three several places in each precinct in said county.

§ 2. It shall be the duty of said board of county commissioners, to give at least twenty days' notice of said election, by causing notices thereof to be posted up at three different places in each precinct; and the qualification of voters, the manner of holding and conducting elections, and making returns thereof, shall be in accordance with the statutes of this territory governing elections.

§ 3. If no place shall have received a majority of all the votes given as provided for in section one of this act, it shall be the duty of the board of county commissioners of said county, within thirty days after said election to order a second election, and give ten days' notice thereof, in the manner prescribed in section one of this act, at which election the vote shall be taken by ballot, between the four highest places voted for at the first election, and the place having the majority of all the votes polled, shall be the county seat of said county, and notice thereof shall be given as required in section one of this act.

§ 4. If no one place shall have received a majority of all the votes polled at the second election, then it shall be the duty of the board of county commissioners, within thirty days after said second election, to order a third election and give notice thereof as required in section three of this act, at which election the vote shall be taken by ballot, between the two highest places voted for at the second election, and the place having the highest number of votes shall be the permanent county seat of said county, and notice thereof, shall be given as prescribed in sections one and three of this act.

§ 5. Any contest of any election held under the provisions of this act shall be brought before the county clerk of said county, and shall be conducted and determined according to the laws governing elections in this territory.

§ 6. The county seat of said county, shall be and remain at the town of Salem in said county, until said election or elections contemplated by this act shall have been held and determined, according to the provisions of this act, and the laws governing elections in this territory.

§ 7. When the county seat of said county shall have been permanently located, according to the provisions of this act, the board of county commissioners of said county, shall, within thirty days thereafter, remove or cause to be removed the records of said county, to the place which shall have been elected to be the county seat of said county.

§ 8. All laws and parts of laws in conflict with the provisions of this act, be and the same are hereby repealed.

§ 9. This act to take effect and be in force from and after its passage.

Approved October 3, 1858.

AN ACT

To more Particularly Define and Settle the Boundaries of Nemaha County, N. T.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska,* That the boundaries of Nemaha county, Nebraska territory, shall be as follows, to wit: The northeast corner of said county to be where the present line between Nemaha and Otoe counties, running east and west, first striking the Missouri river; thence south, and down the main channel of said river, including McKissack's island, to the point where the present boundary line between Nemaha and Richardson counties strikes the Missouri river, and the boundary of said county of Nemaha; in all other respects to be and remain the same as now described by law.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

Approved November 1, 1858.

AN ACT

To Organize and Define the Boundaries and Locate the County Seat of Dixon County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That, all that portion of the territory with the following boundaries, to wit: Commencing at a point where the township line between townships twenty-nine and thirty strikes the Missouri river; thence west along said line to the section line between sections three and four, township twenty-nine, north, range six, east; thence south to the south line of Dakota county; thence west to a point due south of the southeast corner of Cedar county; thence north to the middle of the main channel of the Missouri river; thence down said channel to the place of beginning, be and the same is hereby organized under the name and style of Dixon county.

§ 2. The first election for county officers shall be held in said county on the second Monday in December, A. D. 1858, and shall be conducted in the same manner and governed by the same laws as govern the elections of other counties, excepting that the returns shall be made to the probate judge of Dakota county, who shall issue certificates of election to those who have received a plurality of the votes cast for the respective officers, who shall hold their offices until the next regular election.

§ 3. At the first election, each qualified voter may designate on his ballot the place of his choice for the county seat of said county, and if any one place receives a majority of the votes cast, it shall be the county seat; if not, the county commissioners shall order a new election to be held within twenty days, and they shall give eight days' notice of the same, when the choice shall be between the two places that receive the highest number of votes at the first election, and the one receiving the majority shall be the county seat.

§ 4. At the first election, the polls shall be opened and an election held at Ponca, Galena, Ionia, Northbend, and the same shall be conducted by judges of election appointed by the probate judge of Dakota county, who shall give due notice of the election.

§ 5. All acts and parts of acts conflicting with this act are hereby repealed.

§ 6. This act to take effect and be in force from and after its passage.

Approved November 1, 1858.

AN ACT

To Define the Boundary between Washington and Dodge Counties.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the boundary line between Washington and Dodge counties is hereby established as follows, viz: Beginning on the

fourth (4th) standard parallel, two miles east of the southwest corner of township seventeen, north, range ten, east of the sixth (6th) principal meridian; thence north twelve miles, to the line between townships numbers eighteen and nineteen; thence west two miles, to the line between ranges nine (9) and ten (10); thence north to the south line of Burt county,

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect immediately.

Approved November 2, 1858.

AN ACT

To Change and Redefine the Boundaries of Calhoun County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That hereafter the boundaries of Calhoun county shall be as follows, to wit:

Beginning at the southwest corner of township number thirteen (13) north, range number five east of the sixth principal meridian; thence east to the main channel of the Platte river; thence up said main channel until it intersects the line dividing ranges four (4) and five (5); thence south along said dividing line to the place of beginning.

§ 2. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

§ 3. This act to take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Relocate the Seat of Justice of Washington County.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That the seat of justice of Washington county shall be, and the same is hereby removed from Fort Calhoun to De Soto in said county.

§ 2. The offices required by law to be kept at the county seat shall be removed from Fort Calhoun to De Soto within ten days after notice of the passage of this act from the sheriff of the county.

§ 3. All acts and parts of acts conflicting with this act shall be and the same are hereby repealed.

§ 4. This act shall take effect and be in force from and after its passage.

Approved November 3, 1858.

AN ACT

To Establish the County of Merick, to Define the Boundaries, and Locate the County Seat thereof.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that portion of the territory of Nebraska within the following boundaries, to wit: Beginning at the northeast corner of township sixteen (16), north range three (3), west of the sixth (6) principal meridian; thence south on the eastern boundary of range three (3), west of the sixth (6) principal meridian to the south bank of Platte river; thence westerly along said south bank, to the southeast corner of the county of Hall; thence north along the eastern boundary of said county to the northeast corner of said county; thence east along the fourth standard parallel to the place of beginning, is hereby erected into a new county, and shall be hereafter known and called Merick county.

§ 2. The seat of justice of said county shall be located at the town of Elvira.

§ 3. This act shall take effect immediately.

Approved November 4, 1858.

AN ACT

To Organize the County of Hall, to Define the Boundaries, and to Locate the County Seat thereof.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Nebraska*, That all that portion of the territory of Nebraska within the following boundaries, to wit: Beginning at the northeast corner of township number sixteen (16), north range number nine (9), west; thence due south to the southern bank of Platte river, thence westwardly, following said southern bank of Platte river, to its intersection with the west line of range number twelve (12), west; thence due north with said line to the northwest corner of township number sixteen (16), north range twelve (12), west; thence due east with the line of the fourth standard parallel to point of beginning, is hereby organized into a new county, and shall be hereafter known and called by the name of Hall county.

§ 2. The seat of justice of said county, shall be located by the citizens thereof, under the provisions of an act entitled "an act in relation to new counties," approved March 14, 1855, or of any other law of a similar general character which may be enacted hereafter.

§ 3. It shall be the duty of the governor of this territory to appoint and commission the county officers for said county of Hall, who shall hold their offices until their successors (who shall be elected at the next annual election) shall be elected and qualified.

§ 4. All acts and parts of acts of the council and house of representa-

tives of the territory of Nebraska, which shall conflict with this act are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

Approved November 4, 1858.

AN ACT

To Authorize the Appointment of County Commissioners in Platte County.

Whereas, It is represented to the legislative assembly of this territory, that there is now but one county commissioner in Platte county, and that there is no provision in the statutes providing for filling offices in such cases.

§ 1. Therefore, Be it enacted by the council and house of representatives of the territory of Nebraska, That Gustavus Becher, the present county commissioner of Platte county be, and he is hereby authorized to appoint two county commissioners for said county, who shall qualify according to law, and who shall hold their offices until the next general election, and until their successors are elected and qualified.

§ 2. This act shall take effect from and after its passage.

Approved November 4, 1858.

PART FIFTH.



JOINT RESOLUTIONS AND MEMORIALS.

To the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the legislative assembly of the territory of Nebraska, respectfully represent, that the interests of this territory require that a geological survey should be made without delay.

It is well known that extensive coal fields underlie large portions of our fertile prairies, where timber is too scarce to admit of dense settlement unless coal can be procured for fuel. There are, also, extensive beds of rich iron ore, and recent discoveries render it certain that gold exists at the eastern base of the Rocky mountains, to an extent equal to the famous placers and mines of California. Your memorialists believe that a geological survey, by demonstrating the mineral wealth of this territory, would tend to facilitate the settlement and sale of the public lands, by an industrious population, who would speedily develop the hidden resources of our western prairie plains, which have hitherto been regarded as a barren waste.

We therefore pray your honorable bodies to make an appropriation for a geological survey of this territory and as in duty bound will ever pray, &c.

Resolved, That our delegate in congress be requested to use all honorable means to secure an appropriation for the purposes set forth in the foregoing memorial.

Approved October 2, 1858.

MEMORIAL AND JOINT RESOLUTION

Relative to the Homestead.

Your memorialists, the legislative assembly of the territory of Nebraska, in session convened, believing that the preservation of the

public liberty, and the prosperity of our free and happy form of government, is dependent upon the virtue and intelligence of the masses of the freeholders of the country, and believing further that a great number of the able bodied inhabitants of these United States are destitute of a permanent home and of sufficient ready means to procure suitable quantities of land upon which to obtain a certain livelihood for themselves and families; and believing still further that the true policy of the national government should be to afford suitable encouragement for the early settlement and cultivation of her extensive domain, thereby encouraging the industry and promoting the comfort of the landless within her borders, bettering the condition of her citizens, and the improvements of the country, therefore we ask the passage of a homestead law for the benefit of this territory, similar to that provided for New Mexico.

Resolved, That our delegate in congress be requested to use his best endeavors to secure the passage of a law as indicated in the foregoing.

Approved October 6, 1858.

JOINT MEMORIAL AND RESOLUTION

Relative to the Ponca Indians.

To the Senate and House of Representatives of the United States in Congress assembled :

Whereas, The government of the United States, by their commissioner, has entered into and concluded negotiations with the Ponca Indians, inhabiting the northwestern part of this territory, for the purchase of all their lands; and,

Whereas, The said Indians have, in accordance with the provisions of said treaty, given possession of their homes, hunting grounds and cultivated fields, to the United States, and have removed to a point designated and set apart by the provisions of said treaty aforesaid; and,

Whereas, By said removal they abandoned their hunting grounds and cultivated fields, from which they have hitherto derived their sustenance and support, with the express understanding and assurance that the government would at an early day ratify said treaty aforesaid, and the annuities accruing would be paid to said Indians; and,

Whereas, Reliable information has been communicated to the Hon. W. F. Wilson, agent for the Omaha Indians, and acting agent for said Ponca Indians, both by a deputation from said tribe, and also by official report made by the Hon. J. Shaw Gregory, sub-agent in charge of said Ponca Indians, that the said Indians are utterly destitute of any means of sustenance or support.

Their summer hunt has proved unsuccessful, almost an entire failure, on account of the hostility of the Brule Sioux, having incurred their displeasure by reason of the making of said treaty aforesaid, they were

not able to penetrate to the interior, where game abounds, and the little crop of corn which they with their rude implements of husbandry are able to plant in ground never before cultivated, having been totally destroyed, starvation is speedily and surely thinning their ranks; therefore,

Be it resolved by the council and house of representatives, That the senate be requested to ratify said treaty at an early day, and that the commissioner of Indian affairs of the United States be requested to afford such immediate relief to said Indians, as under the circumstances humanity and sound discretion would dictate, as excessive hunger and utter destitution may incite them to deeds of aggression and savage barbarity upon the pioneers occupying their former hunting grounds and homes, as starvation only can incite the savage to commit.

Be it further resolved, That the secretary be instructed to forward immediately to the commissioner of Indian affairs, and to the chairman of the committee on Indian affairs in the senate, a copy of this memorial and joint resolution, and that our delegate in congress be requested to use his influence to secure the object asked for herein.

Approved October 9, 1858.

MEMORIAL FOR A LAND GRANT.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Your memorialists, the council and house of representatives of the territory of Nebraska, would respectfully represent, That the wise and liberal policy of the general government, as exhibited heretofore in a system of magnificent land grants to states and territories struggling in the weakness of infancy, though strong in undeveloped resources, has encouraged the people of this territory to ask through their representatives, alternate sections of the public lands, and the right of way to aid and facilitate in the construction of the following rail roads:

1st. A road commencing at the mouth of the L'eau qui Court, and running south through the most densely populated portion of the territory, to the northern boundary of Kansas, near the junction of the Big Nemaha and Missouri rivers.

2d. A road commencing on the Missouri river, at or near the parallel of latitude forty degrees and four minutes.

3d. A road commencing at a point between the mouth of the great Platte or Nebraska river and the parallel of latitude forty-one degrees and thirty minutes.

4th. A road commencing at or near the forty-second parallel of latitude.

5th. A road commencing at or near the mouth of the Big Sioux river, running westerly via the mouth of the Running Water. The four roads last mentioned are designed to run in a westerly direction converging in the valley of the Platte, at or near New Fort Kearney. Your memorialists would suggest that the route of these roads would lie over a country

unsurpassed in beauty of scenery and fertility of soil, and, when once its resources are fully developed by the fostering care of the general government, it would become an important source of revenue, and a new pillar of strength to our common country, and furnish a home and occupation for the energy and industry of that class of people who have given the great west its present position and importance in the commerce of the world. Already, in anticipation of such a gratuity from the government, as a donation of lands for rail road purposes, the pioneer hosts are peopling the hill top, the valley and the grove, and civilization is fast rearing its altars on the very ashes which mark the late camping ground of the savage.

Your memorialists would further urge, in addition to the ordinary arguments in favor of a land grant for these roads, that they lie over a country rich beyond comparison, in saline, coal fields, and vast deposits of iron ore, and recent discoveries have developed gold mines, not less productive than those of California and Australia. Already the stream of emigration is pouring, in wild torrents, towards the scene of the new discovery, and the settler is pitching his tent and rearing his cabin in the very shadow of the Rocky mountains, on the eastern slope of which, in a very few years, will spring up an empire equal in social, political and commercial wealth to California—that modern wonder of the world.

Thus, not only the present, but the early future demands at the hands of the general government, a prompt exercise of its accustomed bounty towards our territory in the matter of land grants.

Trusting and hoping for which, your memorialists will ever pray, &c.
Approved October 9, 1858.

JOINT MEMORIAL AND RESOLUTION

Relative to the Construction of a Wagon Road from Platte River
to the Kansas Line.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Your memorialists, the legislative assembly of the territory of Nebraska, would respectfully represent, that the interests of this territory would be greatly advanced by the construction of a wagon road from the Platte river to the Kansas line, the road to commence at a point on the Platte river opposite the termination of the road already located from the Running Water to the Platte.

This road if constructed would pass through a district of country unsurpassed by any other in those peculiar natural advantages which make it susceptible of being rendered one of the most desirable, populous, and important sections west of the Missouri river.

Your memorialists further believe, that upon principles of justice, there having been no appropriation made, thus far, for that portion of the territory situated south of the Platte river, that, that portion of the citizens of Nebraska are entitled to a favorable response to the prayers

of their petition, and as in duty bound your memorialists will ever pray, &c.

Resolved, That our delegate in congress be requested to use all honorable means to bring this subject to the consideration of congress.

Approved October 9, 1858.

JOINT MEMORIAL AND RESOLUTION

Relative to the Yancton Sioux Indians and Kindred Tribes.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Whereas, The government of the United States, by their commissioner of Indians affairs did in April last, negotiate a treaty at Washington with said Yanctons for the purchase of all the country claimed by them, which said country is situated north and east of the Missouri river, and west of the states of Iowa and Minnesota, and adjoining the settlements of said states and this territory, and

Whereas, We deem the ratification of said treaty, and the opening of said country of the utmost importance for the preservation of peace on the frontiers and the property of said states and this territory, and

Whereas, The said country sold by the Yancton, is fertile and valuable, and many citizens of the United States are anxious to settle and improve it, and

Whereas, The said Yanctons relied upon the ratification of said treaty at the last session of congress, and depended upon the payment of the annuities under it, and as the same was not ratified, the Indians are, it is represented, likely to suffer want, and

Whereas, Sundry persons have heretofore, and are likely to continue to intrude upon said country, thus endangering the present peaceful relations with the said Yancton Sioux and their numerous and powerful kindred tribes. Therefore,

Be it resolved by the council and house of representatives of the territory of Nebraska, That the senate be requested to ratify said treaty at an early day, and that the commissioner of Indian affairs, be requested to afford such immediate relief to said Yancton Indians as under the circumstances, humanity and good faith require, and

Be it further resolved, That the secretary of the territory be instructed to forward immediately to the commissioner of Indians affairs, and to the chairman of the committee on Indian affairs in the senate a copy of this memorial and joint resolution, and that our delegate in congress be requested to use his influence to secure the object asked for herein.

Approved October 23, 1858.

MEMORIAL AND JOINT RESOLUTION

Asking for Additional Mail Services from Dakota City to Niobrarah, on the Running Water River.

Whereas, The mail service on the route from Dakota city to Niobrarah is inadequate to supply the wants of that portion of the territory, as said mail is carried on horseback, and the contractor not being compelled to carry overpounds, therefore there is constantly left over over over at Dakota city, a part of said mail, each trip; and

Whereas, that portion of the territory is fast filling up with an industrious, enterprising and intelligent population, and mail facilities being an important element in social, political and commercial life, therefore your memorialists would earnestly recommend that said service be increased to at least two trips a week each way, by two-horse hacks, and would also add that Fort Randall and the other posts on the Upper Missouri, could be supplied at less cost by this route than by any other. Therefore

Be it resolved by the council and house of representatives of the territory of Nebraska, That our delegate in congress be earnestly requested to use his best endeavors to have this memorial granted.

Approved, October 23, 1858.

JOINT RESOLUTION

For an Appropriation to Pay the Expenses of the Extra Session.

Whereas, The governor of the territory, by virtue of the authority vested in him, by section twelve (12) of an act to organize the territories of Nebraska and Kansas, convened the legislative assembly, on Tuesday the twenty-first (21st) day of September, A. D. 1858, and

Whereas, the secretary of the territory declines to pay the expenses of the session convened by the governor's proclamation, from the moneys appropriated to defray the annual expenses of the territory. Therefore

Be it resolved by the council and house of representatives of the territory of Nebraska, That congress be requested to make an appropriation sufficient to defray the expenses of the session of the legislative assembly, convened by the proclamation of the governor, and that the delegate in congress from this territory be instructed to use his influence to obtain an appropriation as above, at the earliest practicable day.

Approved November 2, 1858.

JOINT RESOLUTION AND MEMORIAL.

To the Honorable and Senate the House of Representatives of the United States in Congress assembled.

Your memorialists, council and house of representatives of the territory of Nebraska, would respectfully represent that from the first day of January, A. D. 1856, to the thirtieth day of June, A. D. 1858, John B. and William Bennet, were mail contractors on mail route number 15,002 from Nemaha agency, Kansas territory, to the mouth of the Ayoway river in Nebraska territory—a distance of two hundred and fifty (250) miles—that the mail service on said route was performed in two horse hacks, for which, under their contract they were to receive three thousand and five hundred (\$3,500) dollars per annum only. That in the opinion of your memorialists, the contract price failed to compensate the contractors for the expense and difficulties incurred in stocking and performing service upon the route named, located, as it was when the service was first undertaken, through an unsettled valley, involving a heavy outlay for the purchase and support all that was required for the service at frontier prices.

Your memorialists would further represent that at the time the contract above named, was made, an act of congress, approved March 3, 1855, was in force relative to pre-emption rights, upon mail routes, by the terms of which, contractors upon routes through the unsettled portions of the public lands were entitled to occupy stations, not to exceed one for each twenty miles of the route, and were granted a pre-emption right, to said stations to the extent of six hundred and forty acres of land at each one of the same, that in pursuance of said law, and under the honest impression, as your memorialists believe, that they were entitled to the benefits thereof, the contractors above named, proceeded to establish and occupy the stations provided for by the law of March 3, A. D. 1855, having, in every instance purchased the claim rights of prior occupants of the lands, and in some instances, at very high prices, and in addition, improvements have been made at some of the stations at great expense to the contractors, that in order to complete their title to a portion of the lands occupied by them as stations, the contractors were permitted to enter as pre-emptions at the land office in the Omaha land district, Nebraska territory, the following lands: At Nebraska city station March 30, 1857, the southeast quarter and south half of southwest quarter of section fifteen, and southwest quarter of section fourteen, in township eight, north of range fourteen east.

At Lewiston station August 6, 1857, the southwest quarter and west half of southeast quarter of section eighteen, and west half of section nineteen, and west half of northeast quarter of section nineteen, township number eleven, north of range fourteen, east sixth principal meridian.

At Plattsmouth station March 31, 1857, northeast quarter of section twenty-three, and northeast quarter of northwest quarter of section twenty-three, and southeast quarter of southwest quarter and south half of southeast quarter of section fourteen, southwest quarter of southwest quarter of section thirteen, north half of southwest quarter and south half of northwest quarter and the northwest quarter of

southeast quarter and southwest quarter of northeast quarter of section number twenty-four, township number twelve, north of range number thirteen, east of sixth parallel meridian.

At Saratoga station—The northeast quarter of section ten; the west half of the west half of section three; the southeast quarter of the northwest quarter of section four; the north half of the south half of section four; the northwest quarter of the northwest quarter of section four; township number fifteen north of range number thirteen, east of the sixth principal meridian.

Upon the land included in the Nebraska city station, the contractors are living as a home, and have done so for three years past.

Your memorialists would represent that since the entry of the lands above described, they have learned that a construction has been placed upon the law under which said entries were made, which will deprive the contractors of all benefit of said law and the entries made under it by them.

If such construction should be applied to this case, it would, as your memorialists believe, work the grossest injustice to the contractors, and deprive them of many thousands of dollars honestly expended in the purchase and improvement of the lands occupied for stations, besides stripping them of all which constituted an adequate consideration for valuable services rendered to the government and to the people of this territory.

Your memorialists would represent that the rights acquired by the contractors, under their entries, do not conflict with the rights of any private individual or with the interests of this territory, but that a due regard for the interests of the citizen, by the government, requires that the contractors above named should at least be confirmed in their title to the entries already made by them under the construction honestly and in good faith placed upon the law above cited, not only by the contractors and the officers of the land office, but also by the best legal talent of this territory and by the general understanding of the people residing therein.

Your memorialists therefore pray your honorable body, that a special act may be passed by congress for the relief of John B. and William Bennet, whereby they may be confirmed in their title to the tracts of land above described, and that patents be issued to them therefor, and as in duty bound, &c.

Resolved, That a copy of this memorial and joint resolution be sent to the delegate in Washington, and that he is hereby requested to use his influence to effect the passage of a special act in accordance with the prayer of this memorial.

Approved November 3, 1858.

JOINT MEMORIAL AND RESOLUTION RELATIVE TO SCHOOL FUNDS.

To the Senate and House of Representatives of the United States in Congress assembled:

We, your petitioners, the legislature of Nebraska, ever grateful for the provisions of the organic act, which reserves sections sixteen and thirty-six, for the purpose of being applied to schools, respectfully represent to your honorable body, that, in our opinion, no more favorable period will occur than the present for placing said lands under the control and management of the legislative assembly. These reservations are, in many instances, valuable, both on account of locality and fertility, and by being leased and improved, would be still more increased in value, and from which would, in addition, be derived an educational revenue more needed now than perhaps at any future period of our history.

We therefore ask that these lands reserved for school purposes be immediately placed subject to the control and management of the legislature, without the power of, in any way, selling or disposing of said lands, except for the purpose of leasing the same.

Resolved, That the secretary of the territory be requested to forward a copy of this memorial and resolution to the speaker of the house of representatives in congress, and also to furnish our delegate in congress with a copy.

Resolved, That our delegate in congress be and is hereby requested to make every honorable effort to secure the object sought in this memorial.

Approved November 4, 1858.

JOINT RESOLUTION.

Resolved by the Council and House of Representatives of the Territory of Nebraska, That the secretary of the territory be requested to forward by mail, or otherwise, one copy of the printed laws and journals of the present session of the legislature to each member of the legislature, and also to each officer of the council and house of representatives.

Approved November 4, 1858.

MEMORIAL AND JOINT RESOLUTION

Relative to a Mail Route.

To the Honorable the Senate and the House of Representatives of the United States in Congress assembled:

Your memorialists, the council and house of representatives of the territory of Nebraska, would respectfully represent, that the early establishment of a mail route from Bellevue, via Fairview, Platford, and

Forest city, to Elkhorn city, would greatly subserve the interests and add to the comforts and convenience of a large district of country, densely populated, which is now entirely destitute of mail facilities, your memorialists would respectfully request your favorable and prompt consideration of the claims of the proposed mail route; and as in duty bound, would ever pray, &c.

Resolved, That the secretary of the territory be requested to forward a copy of the above memorial and joint resolution to our delegate in congress, who is hereby requested to use his influence to secure the establishment of the mail route proposed above, and to have the same placed thereon at as early a day as practicable.

Approved November 4th, 1858.

JOINT MEMORIAL.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Your memorialists, the legislative assembly of the territory of Nebraska, would respectfully represent, that heretofore congress appropriated fifty thousand dollars, to be expended by the governor of this territory, in the construction of a territorial capitol, and in pursuance of said law a former governor of the territory proceeded to the erection of a large and elegant building for the use of the territory, that he expended the said sum of money leaving the building but partially finished; that subsequently the city of Omaha, in order to prevent injury to the house, and to make it available to the use of the territory, expended about fifty thousand dollars in enclosing said building and finishing some of the rooms, but that said building is yet in an unfinished state, and is liable to sustain injury if not soon finished; that said building belongs to the territory of Nebraska, and that in our opinion an additional appropriation of thirty thousand dollars will complete said building.

Your memorialists would therefore ask of your honorable body an additional appropriation of thirty thousand dollars for the purpose aforesaid.

Approved November 4, 1858.

JOINT RESOLUTION AND MEMORIAL

Asking an Appropriation to Construct a Bridge over the Platte River.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled :

Your memorialist, the legislative assembly of the territory of Nebraska, respectfully represent that a military or a public road beginning

at L'eau qui Court, and extending southward across the territory, has been located and opened under the direction of the national government, and has become a great thoroughfare whereon military supplies may be expeditiously transported northward.

It also affords an avenue of trade of great advantage to the inhabitants of this territory and others, and is now one of the prominent mail routes in said territory; but your memorialist further represents that the interests of the national government, as well as the interests of this territory would be greatly advanced by the construction of a bridge over the Platte river, at the point where said road reaches and crosses the same.

This river constitutes an almost unpassable barrier between the two great sections of our territory separated by it, and in account of the great difficulty and very often imminent danger in crossing the same, by means of a ferry, travel and the mails are much impeded, and at times are altogether stopped.

Your memorialist would represent that in the immediate vicinity where said road crosses the river, there is an abundance of stone or rock of excellent quality for building purposes, also large quarries of limestone, and extensive wood lands of large growing timber, which will afford ample material of that character for the construction of said bridge, close at hand.

Your memorialist would further represent that the costs of construction of such bridge will be such as entirely precludes any attempt or ability on the part of this territory to accomplish a work of such magnitude and expense, and hence they respectfully and earnestly pray that a sufficient appropriation may be made, at as early a day as possible, for the purpose aforesaid. Therefore,

Be it resolved by the council and house of representatives of the territory of Nebraska, That our delegate in congress be and is hereby requested to use all honorable means to bring this subject to the favorable consideration of congress, and obtain an appropriation of dollars for the purpose aforesaid, and be it further

Resolved, That the secretary of this territory, be and is hereby requested to transmit, properly authenticated two copies of the foregoing memorial and resolution to our delegate in congress.

Approved November 4, 1858.

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